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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
  
SHAWN DRUMGOLD, ) C.A. No. 04-11193-NG  
PLAINTIFF ) Courtroom No. 2  
  
VS.  
  
TIMOTHY CALLAHAN, ET AL., ) 1 Courthouse Way  
DEFENDANTS ) Boston, MA 02210

JURY TRIAL DAY 1  
JURY IMPANELMENT  
SEPTEMBER 8, 2009  
9:27 a.m.

BEFORE THE HONORABLE NANCY GERTNER  
UNITED STATES DISTRICT COURT JUDGE

VALERIE A. O'HARA  
OFFICIAL COURT REPORTER

1       A P P E A R A N C E S:

2               ROSEMARY CURRAN SCAPICCHIO, ATTORNEY, Four Longfellow  
3       Place, Boston, Massachusetts 02114, for the Plaintiffs;

4               Tommasino & Tommasino, by MICHAEL W. REILLY, ESQ.,  
5       Two Center Plaza, Boston, Massachusetts 02108, for the  
6       Plaintiff;

7               Roache & Malone, LLP, by JOHN P. ROACHE, ESQ., 66 Long  
8       Wharf, Boston, Massachusetts 02110, for the Defendants.

9               Bletzer and Bletzer, P.C., by HUGH R. CURRAN, ESQ., 300  
10       Market Street, Brighton, Massachusetts 02135, for the  
11       Defendants;

12               Law Offices of William M. White, Jr. and Associates,  
13       WILLIAM M. WHITE, JR., ESQ., 218 Lewis Wharf, Boston,  
14       Massachusetts 02110;

15               Morgan, Brown & Joy, LLP, by MARY JO HARRIS, ESQ., 200  
16       State Street, Boston, Massachusetts 02109-2605, for the  
17       Defendants.  
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## PROCEEDINGS

THE CLERK: All rise. United States District Court is now in session.

THE COURT: Good morning, everyone, you can be seated. My name is Nancy Gertner, and I'm the Judge of this session. What we're going to do is spend a little bit of time in selecting a jury for this case, the case of Drumgold vs. Callahan. We're going to spend a little bit of time. I wish it could be faster, but the goal here is to try to select a jury that would be the kind of jury that you'd want to have if you were sitting in the shoes of either side in this case.

So the way it's going to work is that I'll ask questions of you as a group, just a few questions, you've already answered a questionnaire, then we'll ask questions of you as a group, but because I fundamentally don't believe that people feel comfortable in talking in a group, we're going to question people individually. The questioning will be very short, it's really in the event you want to share individually what you wouldn't otherwise be comfortable sharing as a member of a group.

My hope is we'll go as quickly as possible. I want you to know however exhausting this is for you, it's equally exhausting for us, but it's a way that I believe, at least, it's a way of getting the fairest jury we know how to

1 pick. Right now you have to stand again because you have to  
2 be sworn in. All rise, please.

3 ( Prospective jurors were sworn)

4 THE COURT: Okay. You can be seated. Let me just  
5 get back to my page here. Just a second. Let me first  
6 describe to you the case, then I'll ask again the question  
7 about whether you can serve, so this case is brought under  
8 the Federal Civil Rights Act in which the plaintiff,  
9 Shawn Drumgold, claims that the defendant, Officer Timothy  
10 Callahan, a Boston homicide detective, violated his right to  
11 a fair trial by withholding exculpatory evidence relating to  
12 a witness who testified in a criminal prosecution of  
13 Mr. Drumgold in 1989.

14 Mr. Drumgold claims that Mr. Callahan's violation  
15 of his rights was a substantial factor in causing his  
16 conviction in 1989. The burden of proof on this case is  
17 upon the plaintiff to prove the elements of the claim by a  
18 preponderance of the evidence. You'll get more detailed  
19 instructions at the end of the case. My goal here is just  
20 to tell you generally about the case to see if any of you  
21 have heard of it.

22 The case arises out of an August, 1988 murder of a  
23 young girl, Tiffany Moore, who was shot while she was  
24 sitting on a mailbox surrounded by a group of teenagers near  
25 the corner of Humboldt Avenue and Homestead Street in

1 Roxbury. The plaintiff, Drumgold, and another man,  
2 Terrance Taylor, were ultimately arrested and charged with  
3 the crime.

4 Mr. Drumgold claims that exculpatory evidence,  
5 which I'll describe to you, pertaining to a witness called  
6 at trial, a witness by the name of Ricky Evans was withheld  
7 from the prosecution. Detective Callahan denies that. I'm  
8 sorry, withheld from the prosecution, which Detective  
9 Callahan denies. Mr. Drumgold further claims that the  
10 knowing suppression of potentially exculpatory evidence by  
11 Detective Callahan violated his rights and resulted in a  
12 conviction that was improper.

13 Again, Detective Callahan denies that any of his  
14 actions denied Mr. Drumgold a fair trial. Have any of you  
15 read, seen or heard anything about this case? Okay. If you  
16 could stand, and I'll put your numbers down, your jury  
17 numbers down. I'll talk to you at sidebar about it in a  
18 moment. Mr. Gertzog.

19 THE JUROR: Yes.

20 THE COURT: Ms. Leighton, Mr. McLaughlin, juror  
21 No. 5; Ms. Brooke Robinson, juror No. 6; Mr. White, juror  
22 No. 16; Ms. Santapaula, juror No. 14; in the next row,  
23 Mr. Potts, juror No. 24; Mr. Scott, juror 20; Mr. Quigley,  
24 is that right, juror No. 34. I'm going to go through all of  
25 my general questions so I don't have to have you come back

1 and forth.

2 This trial could last until October 15th. We put  
3 this in the questionnaire. It's possible it could be  
4 shorter than that, but we wanted to put this on the outside  
5 limit so that you'd know that. We sit from 9 to 1. You  
6 have your afternoons off. You understand, I say that  
7 delicately since most people go to work at 1:00 when they  
8 finish here, so nobody has the afternoon off, we go from  
9 9 to 1, then the week of the 21st, I will not be able to  
10 sit, and we also take Fridays off. So that's the way the  
11 schedule would go.

12 I know on the questionnaire all of you have  
13 indicated you could do this. Is there anyone who absolutely  
14 cannot serve? Before you stand up, I want to say something  
15 else. This is not easy for anybody to be a juror in a case,  
16 we understand that. We also understand that the only way we  
17 have a fair jury is if everyone is part of the pool here,  
18 however difficult it is. So would you stand if you  
19 absolutely cannot serve even on the questionnaire you said  
20 you could.

21 Okay. Ms. Santapaula, you're juror No. 14. I'll  
22 question you again. Okay. First I'm going to ask the  
23 lawyers to introduce themselves and their clients starting  
24 with the plaintiff. Counsel.

25 MS. SCAPICCHIO: Thank you, your Honor. Good

1 morning, ladies and gentlemen, my name is Attorney Rosemary  
2 Scapicchio. I have a law office here in Boston, and I  
3 represent the plaintiff. This is Shawn Drumgold.

4 THE COURT: Okay. Defendants. I'm sorry,  
5 Mr. Reilly, sorry.

6 MR. REILLY: Good morning, ladies and gentlemen,  
7 my name is Michael Reilly. I also represent Mr. Drumgold,  
8 and I also have a law office here in Boston, and with us is  
9 Amy Coggan, who is a law student.

10 THE COURT: Keep your voice up.

11 MR. REILLY: Yes, your Honor.

12 THE COURT: Her name is?

13 MS. SCAPICCHIO: Amy Coggan. Your Honor, she's a  
14 third year law student at Suffolk University Law School in  
15 Boston. She was assisting us in this case and we were  
16 looking for permission for her to second seat the trial.

17 THE COURT: That's fine.

18 MS. SCAPICCHIO: Thank you, your Honor.

19 MS. HARRIS: Good morning, my name is Mary Jo  
20 Harris. I'm also an attorney in Boston. I represent  
21 Detective Callahan, who's a defendant in this action.

22 MR. CURRAN: Good morning, ladies and gentlemen.  
23 My name is Hugh Curran. I'm also an attorney in the City of  
24 Boston at a law firm called Bletzer & Bletzer in Brighton.  
25 I'm also representing Mr. Callahan with Mary Jo Harris.

1 Thank you.

2 MR. ROACHE: Good morning, ladies and gentlemen,  
3 my name is John Roache. I also have a law practice in the  
4 City of Boston. I will be representing former Police  
5 Commissioner Francis Roache and the City of Boston.

6 THE COURT: Anyone familiar with either the  
7 attorneys or the individuals they represent? Familiar with,  
8 related to, know? Okay. There are no affirmative  
9 responses. Now, I've asked the parties to give me a list of  
10 every witness who could conceivably be in this case. It's a  
11 long list, but I can assure you that all these individuals  
12 will not be witnesses in this case. We've asked them to  
13 give me a list just in case. We don't want to be in the  
14 middle of trial and have someone get on the stand who is one  
15 of your long lost uncles, so I ask them to overdo the list,  
16 and they have complied by overdoing this list.

17 So I will give you a list of names, and if any of  
18 these names are familiar to you, just note it, and then  
19 after I'm finished, we'll ask you if you know any of these  
20 people, so the following individuals from Boston: Eric  
21 Johnson, Corinne Delahunt, Stanley Kessler, Mary Alexander,  
22 Ricky Evans -- all from Boston -- Wayne Davis, Ronald Downs,  
23 David Cart, Vincent DiFazio, Theron Davis, Andrew Garvey,  
24 Romero Holliday, Robert Hayden, Mervin Reese, Rana Roisten,  
25 Alice Moore, Cherry Walker, Vantrell McPherson,



1 Tracie Peaks, Chris Cousins, Kevin Lucas, Thomas Gaughan,  
2 Lisa Holmes, Larry Ellison, Willie Simms, Donald Wilson,  
3 Troy Jenkins, Gerald O'Rourke, Terrance Taylor, Paul Murphy,  
4 Tanoi Curry, Shamia Clemons, Travis Goss, Eric Johnson,  
5 Diane Gill, Jose' Garcia, Daniel Linsky, Tyrone Brewer,  
6 Rodney Sadberry, William Celester, Paul Durand -- again, all  
7 from Boston -- Paul Linn, Rosemary McLaughlin, Marlon  
8 Passley, Lewis Santos, Robert George, Tony Smith,  
9 Francis Roache, Angel Toro, Charles Horseley, David Meier,  
10 Edward McNelly, Neil Miller, Darnell Johnson, Ralph Martin,  
11 Honorable Tracy Lyons, Sheryl Cormier, Miller Thomas, Joseph  
12 Dunford, Joseph Saia -- I'm just reading Boston names --  
13 Marie Donohue, Robert Dunford, Sergeant Gary Eblan,  
14 Mark Hayes, Kenneth Fong, Robert Francis, William Hussey,  
15 James Jordan, Paul Leary, Jennifer Maconochie, William  
16 McCarthy, Timothy Murray, Peter O'Malley of Charlestown,  
17 Terrence O'Neil, Kathleen O'Toole, Lalita Pulavarti,  
18 Pervis Ryan, Michael Stratton, Justina Ward, Robert Ahearn,  
19 Lorraine Henshaw, Robin DeMarco, Kevin Averill, Joseph  
20 Carter, Michael Connolly, Robert Cunningham, Donald Devine,  
21 Daniel Dovidio, Thomas Dowd, Paul Farrahar, Robert Foilb,  
22 Gregory Gallagher, Michael Galvin, Darrin Greeley, James  
23 Hasson, Bobbie Johnson, John Kelly, John Kervin, Thomas Lee,  
24 Donald Levine, John McCarthy, Robert Orr, Bridgett Robinson,  
25 Roger Spring, Albert Terestre, James Wood, Joseph Zinck,

1 Paul Joyce, Ralph Cinquegrana, Melvin Tucker.

2 Let's stop there for a second. Anyone know those  
3 individuals? There are no affirmative responses. These are  
4 individuals from cities and towns outside of Boston:  
5 Stanley Bogdon of Belmont; Mark DeLuca of Marshfield;  
6 Joseph Saia, I said Boston, it's actually Norwood;  
7 Richard Walsh of Weymouth; Paul McDonough, Quincy;  
8 Philip O'Shane of Marlborough.

9 MS. SCAPICCHIO: Marblehead.

10 THE COURT: Marblehead. Laura Scherz, is that  
11 Arizona?

12 MR. REILLY: Yes, your Honor.

13 THE COURT: John Stanley; Dr. Michael Lyman,  
14 St. Louis, Missouri; Paul Connolly, Winthrop; Scott Keller,  
15 North Andover; Steve Rappaport, Lowell; John Daley,  
16 Marshfield; John Canavan of Plymouth; Ann Marie Doherty,  
17 Chatham, Massachusetts; Thomas Miller of Canton,  
18 Massachusetts; Herbert Spellman of Kingston; James Hussey of  
19 Norwell. Have I said his name? That's it. Anyone familiar  
20 with those individuals? Okay. Mr. Scott, okay. We'll talk  
21 to you in a moment.

22 THE JUROR: Your Honor, is it know who they are or  
23 have a relationship with them?

24 THE COURT: Either. We'll explore that. You're  
25 Mr. McLaughlin?

1 THE JUROR: Yes.

2 THE COURT: Okay. Go to sidebar, counsel. You,  
3 too, Mr. Brennan. Anybody else before I move?

4 (THE FOLLOWING OCCURRED AT SIDEBAR:)

5 THE COURT: Because of the numbers that have heard  
6 about the case, let's do a preliminary screening and then go  
7 further when we do individual voir dire, in other words,  
8 have you heard about the case? We'll do a preliminary  
9 screening and then otherwise we'll be here all day.

10 MS. SCAPICCHIO: That's fine, your Honor.

11 THE COURT: Maryellen, start with juror No. 3  
12 which is Mr. Gertzog. Mr. Gertzog, come forward. Hi, sir.

13 THE JUROR: Hi.

14 THE COURT: I'm sorry for all the people.

15 THE JUROR: I understand.

16 THE COURT: You heard about the case?

17 THE JUROR: I read about it in the newspaper. I  
18 believe Mr. Drumgold was in prison then freed on something  
19 to do with propriety in the case, and I don't have any other  
20 detail.

21 THE COURT: Stating now, we can talk about you  
22 again afterwards. Do you think it would make it hard for  
23 you to be fair and have an open mind in this case?

24 THE JUROR: I don't believe so based on my  
25 confusion what the facts were. I don't remember the

1 details.

2 THE COURT: We'll talk to you again about that.  
3 You can go back to your seat.

4 THE COURT: Juror No. 4, Brenda Leighton. Hi.

5 THE JUROR: Hi.

6 THE COURT: You heard about the case?

7 THE JUROR: Yes, only because I work with someone  
8 that is from that area.

9 THE COURT: Okay.

10 THE JUROR: But I don't know any specifics.

11 THE COURT: Okay. We were thinking that we'd  
12 question you more specifically inside my office, but do you  
13 think standing here now it would make it hard for you to be  
14 fair in this case because of what you heard about the case?

15 THE JUROR: Truthfully?

16 THE COURT: Truthfully is all we're looking at.

17 THE JUROR: Yeah, I would say yes.

18 THE COURT: You work with someone in the area?

19 THE JUROR: Yes.

20 THE COURT: Who do you work with?

21 THE JUROR: Her name is Jackie.

22 THE COURT: She lives in the area?

23 THE JUROR: Yeah, she was actually the one that  
24 brought it to my attention because she lives in that town.

25 THE COURT: Roxbury?

1 THE JUROR: Yeah, Roxbury.

2 THE COURT: So you've had extended conversations  
3 with her about the case?

4 THE JUROR: I wouldn't say extended, but, you  
5 know, she did bring it to my attention, otherwise I don't  
6 think I would have heard about it because I don't live in  
7 the Boston area.

8 THE COURT: Do you think it would make it hard for  
9 you to sit as a juror?

10 THE JUROR: Knowing what happened to the girl?

11 THE COURT: Yes, this case is not about what  
12 happened to the girl.

13 THE JUROR: It's more about --

14 THE COURT: The prosecution afterwards.

15 THE JUROR: Well --

16 THE COURT: Why don't you stay with us and we'll  
17 talk about it. Think a little bit about it.

18 THE JUROR: Yeah.

19 THE COURT: Okay. Juror No. 5, Mr. McLaughlin,  
20 you've heard about the case and you know one of the  
21 witnesses?

22 THE JUROR: Me?

23 THE COURT: You heard about the case and you heard  
24 one of the witnesses' names?

25 THE JUROR: Yes, I vaguely recall hearing about

1 the case but no real details about it.

2 THE COURT: Okay. Who's the person you know?

3 THE JUROR: Mark DeLuca. I believe he's the Chief  
4 of Police in Duxbury.

5 THE COURT: Mr. DeLuca?

6 THE JUROR: Yes, but I believe he's chief of  
7 police.

8 THE COURT: You just heard of him, you're not  
9 related to him?

10 THE JUROR: No.

11 THE COURT: Do you think his name mentioned in the  
12 case would make it hard for you to be a juror?

13 THE JUROR: No.

14 THE COURT: You could go back. Ms. Robinson.  
15 Hi.

16 THE JUROR: Hi.

17 THE COURT: You've heard about the case?

18 THE JUROR: No, I have not.

19 THE COURT: I think you raised your hand and said  
20 that you had heard about the case?

21 THE JUROR: No, no, I haven't.

22 THE COURT: Did you raise your hand?

23 THE JUROR: No, I didn't.

24 THE COURT: Well then go back to your seat. Juror  
25 No. 14, is that next in order? Are they in order? Juror

1 No. 14 is Ms. Santapaula. Hi.

2 THE JUROR: Hi.

3 THE COURT: First you said you didn't think you  
4 could serve?

5 THE JUROR: I have a trip to Sweden planned coming  
6 back on the 12th, September 27 to October 12th.

7 THE COURT: I'll excuse you. Thank you.

8 THE JUROR: I can leave then?

9 THE COURT: You can go down to the second floor.  
10 That's on your way to leaving.

11 THE COURT: Juror 16, Mr. White.

12 THE JUROR: Good morning, your Honor.

13 THE COURT: Hi. You've heard about the case?

14 THE JUROR: Pardon me?

15 THE COURT: You've heard about the case?

16 THE JUROR: I wasn't sure when you asked about the  
17 case meaning the murder or this particular case, but as far  
18 as the incident from 1988, I'm familiar with that.

19 THE COURT: What about the prosecution and what  
20 happened to it?

21 THE JUROR: I have no specific knowledge of  
22 that.

23 THE COURT: Okay.

24 THE JUROR: Just being an attorney and hearing  
25 things and reading things.

1 THE COURT: Okay.

2 THE JUROR: Growing up in the area.

3 THE COURT: Well, this is a subjective question.  
4 Do you think that anything that you have learned growing up  
5 in the area as an attorney would make it hard for you to sit  
6 as a juror in this case?

7 THE JUROR: Not for those reasons.

8 THE COURT: Okay. Is there another reason I'm  
9 missing?

10 THE JUROR: My office and I have represented the  
11 Town of Framingham and the police department for 30 years,  
12 we've represented the police.

13 THE COURT: In 1983 cases?

14 THE JUROR: No federal civil rights cases.

15 THE COURT: Right.

16 THE JUROR: Yes. I haven't personally, my  
17 partner, Aaron Bikofsky.

18 THE COURT: You think that would make it hard for  
19 you to sit as a juror?

20 THE JUROR: It would make it difficult.

21 THE COURT: I'm going to excuse you. Thank you.  
22 Juror No. 16 is excused. Juror 24, who is Mr. Potts.  
23 Mr. Potts.

24 THE JUROR: Hi, your Honor.

25 THE COURT: You've heard about this case?



1 THE JUROR: Yes.

2 THE COURT: You heard?

3 THE JUROR: I'm a talk radio junkie, so I hear a  
4 lot. I believe there was a case where there was a driveby  
5 shooting near the ballfield and Tiffany was sitting on a  
6 mailbox, and it's been be bandied about recently also, I  
7 believe.

8 THE COURT: This case is more about the  
9 prosecution of Mr. Drumgold. Do you know anything about  
10 that?

11 THE JUROR: I do not.

12 THE COURT: Do you think anything you've heard on  
13 the radio and elsewhere would make it hard for you to sit as  
14 a juror?

15 THE JUROR: As much as I like to fulfill my civic  
16 duty.

17 THE COURT: Because of the talk radio stuff?

18 THE JUROR: Yes.

19 THE COURT: Okay. I'll excuse you. Thank you,  
20 sir. Mr. Scott?

21 THE JUROR: Good morning, your Honor.

22 THE COURT: Good morning.

23 MR. ROACHE: Mr. Scott is --

24 THE COURT: 20. You also knows a witness in the  
25 case, as I understand it?

1 THE JUROR: Yes, John Daley, it was a neighbor,  
2 someone that we socialized with probably back in the  
3 1970s.

4 THE COURT: But not recently?

5 THE JUROR: Not recently.

6 THE COURT: If his name came up or testimony from  
7 him, would that make it hard for you to serve?

8 THE JUROR: No, I don't think it would be.

9 THE COURT: Okay. You also indicated --

10 THE JUROR: I also knew a gentleman by the name of  
11 Matt DeLuca from Marshfield. I think his name was read.

12 MS. HARRIS: It's Mark.

13 THE JUROR: Then I don't.

14 THE COURT: You also indicated I thought that you  
15 had heard about the case?

16 THE JUROR: Yes, I've read about it in the  
17 newspaper.

18 THE COURT: Do you think that anything you've read  
19 or heard would make it hard for you to serve as a juror?

20 THE JUROR: No.

21 THE COURT: Thank you. You can go back. Juror  
22 No. 34, Mr. Quigley. Hi.

23 THE JUROR: Hi.

24 THE COURT: You had heard about the case?

25 THE JUROR: Just on the news and stuff like that,

1 but I do have an issue with the timeline. The 28th of the  
2 September I'm unavailable.

3 THE COURT: 28th, is that Yon Kipper?

4 THE JUROR: Actually my son's being inducted into  
5 the Navy.

6 THE COURT: I wouldn't worry about the 28th of  
7 September because I can't be here either, so we're even.

8 THE JUROR: That's fine.

9 THE COURT: Also juror No. 19 knew, Mr. Brennan.

10 THE JUROR: Good morning.

11 THE COURT: Hi.

12 THE JUROR: I just recollect the case from the  
13 newspapers, and I just don't know if things might start  
14 clicking readback.

15 THE COURT: Do you think right now, is there any  
16 reason --

17 THE JUROR: No.

18 THE COURT: We'll go back and talk to you about it  
19 and see if you can flesh out any more of your memories.

20 THE JUROR: It's quite a while ago.

21 THE COURT: I can't remember what I ate for  
22 breakfast. Do you think that anything that you remember now  
23 as you're standing there would make it hard for you to serve  
24 as a juror?

25 THE JUROR: Probably not, no.

1 (SIDEBAR CONFERENCE WAS CONCLUDED.)

2 THE COURT: We'll talk again about this. So,  
3 ladies and gentlemen, we'll interview you individually.  
4 Those of you who remembered something about this case, try  
5 to see what you can remember, but we'll talk to you  
6 individually about it, and we'll ask that when you finish  
7 talking to me and the lawyers and you come back in this  
8 room, you don't share with the other jurors what you have  
9 been asked about. This is not a civics lesson. There's no  
10 right or wrong. We want your best reaction, we want your  
11 most honest reaction, just come back and wait and relax and  
12 we'll try to get this done as quickly as possible.

13 THE CLERK: All rise.

14 (A recess was taken.)

15 (THE FOLLOWING OCCURRED IN JUDGE'S LOBBY:)

16 THE COURT: I want to put one thing on the record.  
17 I've forgotten the name of the case. It's a criminal case  
18 which I wrote which talked about voir dire in a criminal  
19 case that was public and that to some degree having the  
20 questioning in here undermines the public's access to this,  
21 so everyone around the table, the parties have to waive  
22 public access to the voir dire so we can have the  
23 questioning here.

24 MS. SCAPICCHIO: It's waived on behalf of the  
25 plaintiff, your Honor.

1 MS. HARRIS: It's waived for us, your Honor.

2 MR. ROACHE: Waived, your Honor.

3 THE COURT: Your Honor, can I ask a question, how  
4 many jurors are we sitting?

5 THE COURT: Good point. Well --

6 MS. SCAPICCHIO: Last time we did 14.

7 THE COURT: So we can do 14 again. That's 8, I'm  
8 sorry, that's 14. Three challenges each side so we're  
9 clearing 20.

10 THE CLERK: I have them calling tomorrow  
11 tonight.

12 THE COURT: 14. This will be considerably  
13 shorter. Okay. I resist time limits, and I may be  
14 challenged in this case. Won't you sit down. This is  
15 Mr. Coseglia.

16 THE JUROR: Coseglia.

17 THE COURT: Very short questioning each side. Who  
18 begins, Ms. Scapicchio?

19 MS. SCAPICCHIO: Yes, your Honor. I'm  
20 Rose Scapicchio. I represent Shawn Drumgold in this matter.  
21 In looking at your questionnaire, you indicated on question  
22 24 that you had some relatives working for either the  
23 District Attorney's Offices in Middlesex, Essex County and  
24 U.S. Attorney's Office. Would that affect your ability do  
25 you think to be fair and impartial in this case?

1 THE JUROR: No, the three people I mentioned are  
2 not relatives, they're former colleagues or currently  
3 colleagues and friends. No, it would not.

4 MS. SCAPICCHIO: If you were asked to listen to  
5 the testimony of a police officer vs. a civilian witness,  
6 would you give either side any more or less weight because  
7 of the police officer position vs. the civilian witness  
8 position?

9 THE DEFENDANT: No.

10 MS. SCAPICCHIO: Okay. If a police officer  
11 violates someone's constitutional right and causes them to  
12 be wrongly convicted, how would you feel about awarding  
13 money damages?

14 THE JUROR: I feel favorable to awarding money  
15 damages.

16 MS. SCAPICCHIO: I don't have any further  
17 questions, your Honor.

18 MS. HARRIS: Thank you. Good morning. My name is  
19 Mary Jo Harris, and we're the defense team, if you will, for  
20 Mr. Callahan and Mr. Roache for the City of Boston. I  
21 understand that you are a practicing lawyer?

22 THE JUROR: I am.

23 MS. SCAPICCHIO: What kind of law do you practice?

24 THE JUROR: I do general commercial litigation.  
25 Most of my practice is in pharmaceutical industry-related

1 products liability and consumer fraud cases.

2 THE COURT: Did you ever do any work as a criminal  
3 defense attorney in law school or any clinics, anything like  
4 that?

5 THE JUROR: No, definitely not.

6 MS. HARRIS: Any interest in it at all?

7 THE COURT: You're offering him a job?

8 THE JUROR: In doing it, no.

9 MS. HARRIS: Okay. This case, as you know, it's  
10 an allegation of a wrongful conviction, and obviously the  
11 defense is that there was no misconduct on the part of the  
12 officer, and you indicated that you'd be able to keep an  
13 open mind as you hear the evidence; is that fair to say?

14 THE JUROR: Absolutely.

15 MS. HARRIS: And as you probably know, the  
16 plaintiff goes first in a civil case, so you would have to  
17 listen to the plaintiff's case before the defendants  
18 actually have a chance to put their case before you. Do you  
19 think you'd be able to keep an open mind waiting for that to  
20 happen?

21 THE JUROR: Absolutely.

22 MS. HARRIS: If you had a sense that maybe a  
23 conviction went wrong but it wasn't necessarily the fault of  
24 the person who is being charged with misconduct under the  
25 civil rights act, would you be able to separate those two

1 things out in your mind?

2 MS. HARRIS: Yes.

3 MR. ROACHE: Just one question, sir. In your  
4 practice do you generally represent plaintiffs or  
5 defendants?

6 THE JUROR: I would say that I generally represent  
7 defendants. Most of my work is defending large  
8 pharmaceutical companies, but I do some bit of work on the  
9 civil side representing plaintiffs as well.

10 MR. ROACHE: Thank you, that's all I have.

11 THE COURT: I want to ask you because we're not  
12 going to be finished doing jury selection today, we'll ask  
13 you to call this 1-800 number after 6:00 tomorrow, and that  
14 will let you know whether you're on the final jury, and if  
15 you are, we'll start on Thursday.

16 MR. CURRAN: Just a quick question in regards to  
17 the scheduling with regards if you're in litigation, do you  
18 have any trials coming up that you're scheduled to  
19 participate in in the next six weeks?

20 THE JUROR: I don't have any trials scheduled, I  
21 do not have a trial scheduled.

22 THE COURT: Thank you very much.

23 MS. SCAPICCHIO: Thank you.

24 MR. CURRAN: Thank you.

25 THE COURT: Next juror is Teelucksingh. Hi, we



1 meet again. If we could bring this person in.

2 THE CLERK: Judge, I skipped over 2 and brought 3  
3 in instead.

4 THE COURT: That's fine.

5 MS. HARRIS: Good morning, as we've introduced us,  
6 I'm Mary Jo Harris, and I represent Timothy Callahan.  
7 Mr. Teelucksingh, I noticed you indicated you just started a  
8 new job?

9 THE JUROR: Yes.

10 MS. HARRIS: Will that be a problem for you  
11 sitting here?

12 THE JUROR: Well, my concern, I was hired for an  
13 eight-week temporary basis to be then considered for  
14 full-time work, gone after eight weeks, so I'm just two and  
15 a half weeks into that. I'm willing to serve, but I'm  
16 really concerned that this really might jeopardize my  
17 chances.

18 THE COURT: No one can judge that better than you,  
19 if you think it would jeopardize your job, this economy, I'm  
20 not going to push anybody.

21 THE JUROR: Well, it clearly jeopardizes the job  
22 since it's an eight-week term, and I've been working around  
23 the clock.

24 THE COURT: You know what, I'll excuse you,  
25 Mr. Gertzog, your civic duty is important, but your

1       livelihood is important also.

2               THE JUROR:   It is.

3               THE COURT:   We'll excuse you.

4               THE JUROR:   Do I wait with the jurors?

5               THE COURT:   No, you go back down to the second  
6 floor.   Ms. Molloy will take care of you.

7               THE COURT:   I think there's a higher rate of I  
8 can't do it and I'm not about to push.

9               THE CLERK:   Judge, this is juror No. 2.

10              THE COURT:   Tell me how to pronounce your name.

11              THE JUROR:   Teelucksingh.

12              MS. HARRIS:   Good morning.   My name is Mary Jo  
13 Harris, and I represent Timothy Callahan in this case.   I  
14 notice from your questionnaire that you reported that you  
15 had an OUI in your past?

16              THE JUROR:   Yes.

17              MS. HARRIS:   Can you tell me how long ago that  
18 was?

19              THE JUROR:   1987, 1988.

20              MS. HARRIS:   Was that in Boston?

21              THE JUROR:   No, actually it's right next to my  
22 house, one house.   I had a flat tire and the officer pulled  
23 up, and I was changing it and he said OUI.   I had suspended  
24 license for a year.

25              MS. HARRIS:   Is there anything about that

1 experience that would cause you to view the police officers  
2 in this case with suspicion or dislike or any kind of a bias  
3 do you think?

4 THE JUROR: Actually I didn't take the  
5 breathalyzer, and what happened is he just assumed I was  
6 under the influence of operating, so and then the case at  
7 the courthouse, whoever is the prosecutor said the police  
8 ten years' experience on the job and so I just accepted the  
9 sentence.

10 MS. HARRIS: Even though you didn't believe it was  
11 fair that the police officer had told the truth?

12 THE JUROR: Yes.

13 MS. HARRIS: Is that something that you think  
14 would color your perception here because in this case the  
15 allegations are that the police didn't tell the truth about  
16 the investigation that they conducted, so do you think that  
17 your personal experience would affect the way you judge  
18 because essentially you would be judging these witnesses?

19 THE JUROR: I would say yes, it would.

20 THE COURT: Okay. I'll excuse you  
21 Mr. Teelucksingh, there will be cases that won't involve  
22 officers. Thank you so much. Juror No. 4, Brenda Leighton.

23 THE CLERK: Judge, it's juror No. 4.

24 THE COURT: Hi. We meet again. Why don't we  
25 start with you, Ms. Scapicchio.

1 MS. SCAPICCHIO: Hi, my name is Rose Scapicchio.  
2 I represent Shawn Drumgold. He's the plaintiff in this  
3 case. I have a couple of questions for you. This is a case  
4 where Shawn Drumgold alleges that Detective Callahan  
5 withheld some information from a prosecutor that he could  
6 have used, he pleads at his trial and that that resulted in  
7 an unfair trial. We're asking that you evaluate the  
8 testimony of all the witnesses in this case, some of whom  
9 are going to be police officers and some of who are going to  
10 be civilian witnesses. Would you give any more credit to a  
11 witness who was a police officer merely because of his or  
12 her position as a police officer?

13 THE JUROR: No.

14 MS. HARRIS: Okay. Would you listen to the  
15 evidence and decide who was telling the truth?

16 THE JUROR: Yes.

17 MS. SCAPICCHIO: Also in this case we believe that  
18 you're going to hear evidence. That evidence was withheld  
19 from the prosecutor prosecuting Mr. Drumgold on the criminal  
20 case, and you will hear from a witness, specifically a kid  
21 by the name of Ricky Evans. This witness has in the past  
22 testified at a criminal trial where he'll come in and say he  
23 committed perjury at the criminal trial at the request of  
24 Detective Callahan. Would that give you any pause to  
25 believe his testimony here?

1 THE JUROR: It might slightly if he lied once.

2 MS. SCAPICCHIO: Okay. Can you elaborate, can you  
3 tell me would you listen to the testimony or would you  
4 think --

5 THE JUROR: Yeah, I would, I would listen to it.

6 MS. SCAPICCHIO: Would you prejudge that, in other  
7 words, would you hold it against him if he got on the stand  
8 and told you that at the request of Detective Callahan he  
9 lied at the criminal trial of Shawn Drumgold? Would that  
10 make you disbelieve what he's saying now?

11 THE JUROR: I can't really say for sure, but I  
12 mean that would be in the back of my mind that he lied once  
13 before.

14 MS. SCAPICCHIO: Okay. How would that affect your  
15 ability to be fair and impartial do you think?

16 THE JUROR: I would have to hear from other  
17 witnesses as well to really, you know, make a decision. I  
18 mean, I wouldn't rely on him alone since you're saying he  
19 lied once before.

20 MS. SCAPICCHIO: Okay.

21 THE JUROR: Do you know what I'm saying?

22 MS. SCAPICCHIO: If you found after listening to  
23 all the evidence Detective Callahan violated Shawn  
24 Drumgold's right to a fair trial by withholding the  
25 exculpatory evidence, would you be able to award money

1 damages to Shawn Drumgold?

2 THE JUROR: Well, if that, yeah, if it were  
3 proven, you know, without a doubt.

4 MS. SCAPICCHIO: Well, the standard, the Judge  
5 will instruct you on what the standard is in a civil case.

6 THE JUROR: Okay.

7 MS. SCAPICCHIO: It's not really beyond a  
8 reasonable doubt, it's not the standard you hear on TV and  
9 the crimes, but that's not my job, that's the Judge's job.  
10 If you listen to the evidence and you came to the conclusion  
11 at the end of the evidence that Shawn Drumgold had proven  
12 his case that what Detective Callahan did in withholding the  
13 exculpatory evidence did have an affect on his trial, would  
14 you be able to award Shawn money damages?

15 THE JUROR: I believe so, yeah, yes.

16 MS. SCAPICCHIO: Thank you.

17 MS. HARRIS: Good morning. I'm Mary Jo Harris. I  
18 represent Detective Callahan. I think you mentioned outside  
19 that you had a friend at work, your friend Jackie told you  
20 about a bit about the case?

21 THE JUROR: Yes.

22 MS. HARRIS: What did she tell you?

23 THE JUROR: It wasn't anything specific, just that  
24 the young girl had been killed on her stoop.

25 MS. HARRIS: Did you have any discussion about the

1 investigation?

2 THE JUROR: No.

3 MS. HARRIS: Or the impact?

4 THE JUROR: It didn't go that far.

5 MS. HARRIS: Did Jackie live in the neighborhood  
6 when the murder occurred?

7 THE JUROR: Yes.

8 MS. HARRIS: So when you spoke about it, you were  
9 talking about the murder, not about the prosecution or  
10 anything that happened thereafter?

11 THE JUROR: Right, only because there had been  
12 other incidents in that area.

13 MS. HARRIS: Okay. And in this case, you know,  
14 like in every case, you know, there's two sides to every  
15 story, and you've indicated that if you were chosen to sit  
16 on this jury that you would be able to listen to the  
17 evidence that's presented by all of the witnesses?

18 THE JUROR: I feel I could.

19 MS. HARRIS: You feel you could preserve judgment?

20 THE JUROR: Yes, and, again, the Judge does  
21 instruct on, but the ground rules are you're supposed to  
22 reserve judgment until you've heard the whole story, both  
23 sides, and collectively with the other jurors come to some  
24 conclusions. You think you'd be able to do that?

25 THE JUROR: Yes.

1 MS. HARRIS: I think in the questionnaire you have  
2 indicated you have some friends who are in the police  
3 department, the Mass. State Police?

4 THE JUROR: Right.

5 MS. HARRIS: What kind of relationships are those?

6 THE JUROR: We're just friends, I've just known  
7 them for a long time, you know, we live in the same town  
8 and --

9 MS. HARRIS: Have you had any discussions with  
10 them that would make you question --

11 THE JUROR: No.

12 MS. HARRIS: -- or have doubts? Let me just  
13 finish. This lady is trying to take down every word. Have  
14 you had any conversations with her that would cause you to  
15 question the ethics or the propriety of police action?

16 THE JUROR: No. We don't discuss like legal, you  
17 know.

18 MS. HARRIS: Work stuff?

19 THE JUROR: Exactly. It's more personal, you  
20 know, getting to...

21 MS. HARRIS: Thanks.

22 THE COURT: Mr. Roache.

23 MR. ROACHE: Very quickly. Did your friend Jackie  
24 speak to you at all about the arrests that occurred in the  
25 killing of Tiffany Moore?



1 THE JUROR: No.

2 MS. HARRIS: Did she discuss anything in the  
3 neighborhood as to whether there was any rumors in the  
4 neighborhood about who may have committed the murder of  
5 Tiffany Moore?

6 THE JUROR: No, we just discussed it one time at  
7 the time it happened.

8 MR. ROACHE: Did she ever discuss with you that  
9 the persons that were arrested were not the ones that really  
10 committed the murder of Tiffany Moore?

11 THE JUROR: I don't recall ever saying, no.

12 MR. ROACHE: Do you have any information one way  
13 or the other as to any allegations about the way in which  
14 the investigation took place?

15 THE JUROR: No.

16 MR. ROACHE: Okay. That's all I have, thank  
17 you.

18 THE COURT: Okay. I'm going to give you a number  
19 to call tomorrow at 6:00. It's a 1-800 number. You need  
20 your juror number, which was on the card, then you'll know  
21 whether you're on the final jury. Thank you very much.

22 MS. SCAPICCHIO: Thank you.

23 MS. HARRIS: Could I ask one thing before the next  
24 juror comes in?

25 THE COURT: Yes.

1 MS. HARRIS: I recognize that we've competing  
2 motions about the duty to tell the prosecutor on the case.

3 THE COURT: Yes.

4 MS. HARRIS: I would, I guess, raise an objection  
5 to phrasing questions that imply to the jurors that that is  
6 the duty.

7 THE COURT: I think that's fair.

8 THE CLERK: Juror 5.

9 THE COURT: Mr. McLaughlin that we had before.

10 THE JUROR: Yes.

11 THE COURT: The question begins.

12 MS. HARRIS: Good morning, Mr. McLaughlin, I'm  
13 Mary Jo Harris. I represent Timothy Callahan along with my  
14 colleague here, Hugh Curran. I understand that you have  
15 friends who are affiliated with the BPD?

16 THE JUROR: Yes.

17 MS. SCAPICCHIO: Would that cause you to have a  
18 pro or con feeling about any of the witnesses who may be  
19 testifying in this case?

20 THE JUROR: No, I don't think it affects me at  
21 all.

22 MS. HARRIS: Basically the subject matter of this  
23 case is a wrongful conviction, and as the defendants, we're  
24 going to be following the evidence that is presented by the  
25 plaintiff. Would you be able to listen to all of the

1 evidence and reserve your judgment one way or the other  
2 until you've heard the entire story from both sides?

3 THE JUROR: Yes.

4 MS. HARRIS: There are some allegations that  
5 witnesses testified one way at the criminal trial and now  
6 this witness is going to be claiming that he testified  
7 falsely in 1989 at the behest of the police witnesses, so  
8 he'll essentially be recanting. Would you be able to listen  
9 to that kind of testimony and keep an open mind to both his  
10 explanations for his behavior 20 years ago and his  
11 explanation for his behavior now?

12 THE JUROR: Yes.

13 MR. ROACHE: I don't have any questions.

14 MS. SCAPICCHIO: Hi, I'm Rose Scapicchio. I  
15 represent Shawn Drumgold in this matter. I noticed that you  
16 were a hockey coach. Would the six weeks here interfere  
17 with the obligations as the hockey coach?

18 THE JUROR: I thought it would because we have  
19 some afternoon practices, but you think it ends at 1:00, so  
20 it wouldn't be a significant conflict.

21 MS. SCAPICCHIO: Okay. Now, in this case Shawn  
22 Drumgold alleges that Detective Callahan, who's the  
23 defendant in this case, withheld some evidence from the  
24 prosecutors in this case, and that evidence he says resulted  
25 in an unfair trial to him. If you listened to all of that

1 evidence and in the end had to make a judgment call as to  
2 who you would believe between a police officer and a  
3 civilian witness in that you have friends who are in the  
4 State Police and the Boston Police and the probation  
5 department, would you give an edge to a witness who was a  
6 police officer and believe that he has more of a duty to  
7 tell the truth than a civilian witness?

8 THE JUROR: No.

9 MS. SCAPICCHIO: Why?

10 THE JUROR: Because I think there's two sides to  
11 every story, so I would look at the facts and make a  
12 judgement on that and not be bias because I have friends  
13 that are in that profession.

14 MS. SCAPICCHIO: Now, if you had listened to all  
15 the evidence and you concluded at the end of the trial that  
16 Shawn Drumgold met his burden and determined that resulted  
17 in an unfair trial to him, would you be able to award money  
18 damages to Shawn Drumgold?

19 THE JUROR: If it was appropriate. I don't know  
20 what the guidelines are, but if that's part of the  
21 process.

22 MS. SCAPICCHIO: Some people think that although  
23 the police make mistakes and people are wrongfully  
24 convicted, that's pretty much the price we pay to have a  
25 police force. Do you have any feelings one way or other

1 about that statement?

2 THE JUROR: Say it again.

3 MS. SCAPICCHIO: Sure. Some people think that  
4 police do the best job they do out there and people still  
5 get wrongfully convicted, but that's the price we pay to  
6 have a police force. Do you have any feelings about that  
7 statement? Do you agree with it? Do you disagree with it?

8 THE JUROR: I would say I tend to agree with it.

9 MS. SCAPICCHIO: Why?

10 THE JUROR: Because I think in that profession  
11 people are doing the best job they can and they're not  
12 perfect and mistakes can happen.

13 MS. SCAPICCHIO: Okay. So when you say mistakes  
14 can happen, are you more willing to overlook mistakes the  
15 police make because police are hired to protect us?

16 THE JUROR: No.

17 MS. SCAPICCHIO: Can you explain?

18 THE JUROR: Just as being human beings can  
19 happen.

20 MS. SCAPICCHIO: You think that's the price we pay  
21 for police service we get?

22 THE JUROR: I don't think it's a price we pay, I  
23 think it's an outcome of people not being perfect and things  
24 happening.

25 MS. SCAPICCHIO: And given that you feel that way,

1 would you find it difficult at all if you believed at the  
2 end of this case that Detective Callahan did withhold  
3 evidence from a prosecutor awarding Shawn Drumgold money  
4 damages?

5 THE JUROR: No, I wouldn't find it difficult.

6 MS. SCAPICCHIO: Okay. Thank you very much.

7 THE COURT: Okay. Mr. McLaughlin, I'm going to  
8 give you a telephone number to call after 6:00 on  
9 Wednesday.

10 THE JUROR: Okay.

11 THE COURT: You need your juror number, which was  
12 on the card, and at that point you'll find out if you're on  
13 the final jury in this case. Thank you so much. Juror  
14 No. 6. Hi, Ms. Robinson. I don't remember who goes.

15 MS. SCAPICCHIO: I'll go. Hi, I'm Rose  
16 Scapicchio. I represent Shawn Drumgold in these matters.  
17 You're going to hear evidence in this case from a police  
18 detective, Detective Callahan, as well as forensic evidence,  
19 some civilian witnesses, and the allegations are that  
20 Shawn Drumgold claims that Detective Callahan failed to turn  
21 over some exculpatory evidence to the prosecutors in this  
22 case, and as a result of that he was wrongfully convicted.

23 If you heard that evidence and you had to decide  
24 whether a police officer was telling the truth or a civilian  
25 witness was telling the truth, would you give any more

1 weight to a police officer merely because of his or her  
2 position as a police officer?

3 THE JUROR: No, not necessarily.

4 MS. SCAPICCHIO: Okay. And some people think that  
5 even though police make mistakes and people are wrongfully  
6 convicted, that's the price we pay for having a police  
7 force. Do you agree with that statement?

8 THE JUROR: No.

9 MS. SCAPICCHIO: Okay. Can you elaborate?

10 THE JUROR: Can you actually repeat it?

11 MS. SCAPICCHIO: Sure. Some people think even  
12 though people make mistakes and people may be wrongfully  
13 convicted, that's the price we pay.

14 THE JUROR: No. I believe that everyone, you  
15 know, I agree that, you know, police are human and they'll  
16 make mistakes, but I still feel like they should be  
17 corrected.

18 MS. SCAPICCHIO: Okay. In this case if you were  
19 to listen to all of the evidence and at the end of the trial  
20 conclude that Shawn Drumgold had met his burden of proving  
21 that Detective Callahan withheld evidence from the  
22 prosecutors and it did affect his right to a fair trial,  
23 would you be able to award Shawn Drumgold money damages?

24 THE JUROR: Yeah, I guess so, yeah, sure.

25 MS. SCAPICCHIO: Okay. I'm done, your Honor,

1       thank you, thank you very much.

2               MS. HARRIS: Thanks. My name Mary Jo Harris, and  
3 I represent Mr. Callahan. Did you have an area of specialty  
4 or focus?

5               THE JUROR: End of life, palliative care.

6               MS. HARRIS: The issues that are in this case  
7 obviously arise out of a wrongful conviction. You just  
8 mentioned that you would understand that mistakes could  
9 happen. Would you have any difficulty if you heard the  
10 evidence in this case and if you disagreed with the finding  
11 of the original jury that convicted Mr. Drumgold but  
12 nevertheless felt there was nothing about that trial that  
13 could be attributed to any misconduct or any intentional  
14 misbehavior on the part of police, would you have a  
15 difficult time finding in favor of Detective Callahan if you  
16 thought something went wrong?

17              THE JUROR: No, not necessarily. It would depend  
18 on the evidence, I suppose.

19              MS. HARRIS: I think you had also said that you  
20 served as a juror on a prior occasion?

21              THE JUROR: Yes.

22              MS. HARRIS: Just generally what kind of case was  
23 that?

24              THE JUROR: It was a murder trial.

25              MS. HARRIS: It was?



1 THE JUROR: Yeah.

2 MS. HARRIS: Where did you serve?

3 THE JUROR: Barnstable District Court on the  
4 Cape.

5 MS. HARRIS: Did anything about that experience  
6 color the way you understand the criminal justice system?

7 THE JUROR: Yes, very much so actually.

8 MS. HARRIS: Could you tell us about that?

9 THE JUROR: It's just the way -- I don't know.  
10 It's hard to explain. I guess the jurors I felt like  
11 weren't very qualified to make a decision, and the way the  
12 decision was made was very, very quickly, and I actually was  
13 the only one that wanted to discuss it, and I didn't -- it  
14 made me uncomfortable, and I was young, I was only 18 at the  
15 time.

16 THE COURT: Would you have --

17 THE JUROR: So I felt not very qualified to be  
18 deciding this person's life. That was what I was kind of  
19 left with.

20 MS. HARRIS: Have you had any other experiences,  
21 you know, talking about or learning about the criminal  
22 justice system since that time?

23 THE JUROR: Not really, no.

24 MS. HARRIS: And, you know, forgive me if this is  
25 redundant or repetitive. Having had that experience as a

1 juror in a criminal case, part of what will be the evidence  
2 in this case is going to be evidence about the 1989 criminal  
3 trial, and would you be able to sort of accept, how can I  
4 say, you know, understanding that there's one piece of that  
5 trial that's at issue here, would you be able to listen to  
6 all of that I guess with an open mind is what I'm trying to  
7 ask you?

8 THE JUROR: Yes, definitely.

9 MS. HARRIS: John.

10 MR. ROACHE: Hi, I represent former police  
11 Commissioner Francis Roache and the City of Boston. The  
12 fact that the City of Boston may be a defendant in this  
13 case, would that affect your ability to find for either or  
14 against the city?

15 THE JUROR: No, I don't think so.

16 MR. ROACHE: Would it affect your ability to award  
17 damages either for or against Mr. Drumgold?

18 THE JUROR: No, it shouldn't.

19 MR. ROACHE: It shouldn't?

20 THE JUROR: No.

21 MR. ROACHE: The fact that if the city is found  
22 liable that the city would have to pay, may have to pay  
23 money damages, would that have any impact on you at all?

24 THE JUROR: No.

25 MR. ROACHE: That's all I have.

1 MR. CURRAN: Judge, just a few questions, I don't  
2 mean to interrupt.

3 THE COURT: You do mean to interrupt, but that's  
4 all okay. Do you recall who the prosecutor was on the case  
5 you handled?

6 THE JUROR: I believe, I'm going to say for sure,  
7 but I believe his last name was Robinson because I remember  
8 that because that's the same last name.

9 MR. CURRAN: Do you recall the prosecutor?

10 THE JUROR: No.

11 MR. CURRAN: The fact that there's going to be  
12 former prosecutors, current prosecutors and criminal defense  
13 lawyers that handle murder cases called as witnesses in this  
14 case, is your experience as a juror in how they conducted  
15 themselves in that case going to shape any decisions that  
16 you make in evaluating their credibility?

17 THE JUROR: No, no, it shouldn't.

18 MR. CURRAN: Okay. Thank you very much.

19 THE COURT: Anything further?

20 MS. SCAPICCHIO: No, your Honor.

21 THE COURT: Ms. Robinson, I'm going to give you a  
22 number to call after 6:00 on Wednesday. You're not on the  
23 final jury yet, you'll know whether you're on the final  
24 jury. You'll need to have your juror number at the time.  
25 If you are, we'll start on Thursday.

1 THE JUROR: My juror number was on my summons?

2 THE COURT: That's right. Thank you.

3 Mr. DeSouza. Hi, Mr. DeSouza, we'll start with  
4 Ms. Scapicchio.

5 MS. SCAPICCHIO: Sure. Hi, Mr. DeSouza, my name  
6 is Rose Scapicchio. I represent Shawn Drumgold in this  
7 case. He's the plaintiff. In this case you're going to  
8 hear evidence from police officers and evidence from  
9 civilian witnesses, and the allegation is that Shawn  
10 Drumgold says that Detective Callahan withheld some  
11 exculpatory evidence from the prosecutors prosecuting his  
12 criminal matter, and as a result of that he did not get a  
13 fair trial. In evaluating the testimony in this case of  
14 police officers and of civilian witnesses, would you give  
15 any more weight to a police officer's testimony because you  
16 think he has more of a duty to tell the truth?

17 THE JUROR: I'd be factored, both.

18 MS. SCAPICCHIO: So you wouldn't hold one a little  
19 bit higher than the other because he was a police officer?

20 THE JUROR: No.

21 MS. SCAPICCHIO: In this case, the allegations are  
22 that Shawn Drumgold -- well, Detective Callahan withheld  
23 some evidence that resulted in Shawn Drumgold's wrongful  
24 conviction. If at the end of the trial, you came to the  
25 conclusion that Shawn Drumgold had proven his case, would

1       you be able to award him money damages?

2               THE JUROR:   No.

3               MS. SCAPICCHIO:   Okay.   Why not?

4               THE JUROR:   If the defendant would prove the case  
5       and if the evidence shows the damages would be reported.

6               MS. SCAPICCHIO:   So you would be able to award  
7       money damages?

8               THE JUROR:   Yes.

9               MS. SCAPICCHIO:   I may have misunderstood you.

10              THE JUROR:   Yes.

11              MS. SCAPICCHIO:   Now, some people think that  
12       police officers make mistakes and wrongful convictions  
13       happen, but that's the price we pay for a police force.   Do  
14       you agree with that statement?

15              THE JUROR:   Yes, sometimes the police officers do  
16       make mistakes, and yes --

17              MS. SCAPICCHIO:   When you say yes, do you think  
18       that under those circumstances police officers should not be  
19       held responsible because they're just doing their job?

20              THE JUROR:   No, they should be held responsible.

21              MS. SCAPICCHIO:   They should be.   Thank you.

22              MS. HARRIS:   Good morning, sir.   My name is  
23       Mary Jo Harris, and along with Mr. Curran we represent  
24       Detective Callahan.   It appears you're a single father of a  
25       12 year-old daughter?

1 THE JUROR: Sixteen.

2 MS. HARRIS: This case involves allegations coming  
3 out of the murder of a young girl. Would the fact of that  
4 murder and the fact you've got a young daughter of your own,  
5 would that cause you any difficulty to hearing the evidence  
6 in this case to you?

7 THE JUROR: No.

8 MS. HARRIS: I believe you indicated you had  
9 served on a jury once before?

10 THE JUROR: Yes.

11 MS. HARRIS: Can you tell us what kind of case it  
12 was?

13 THE JUROR: Well, it's about two young kids. At  
14 the time they were 16, and at the time of the trial they  
15 were 18, and it came after two years and the Judge said the  
16 state didn't have the proper evidence to show, they should  
17 have never come to the trial, so after listening to the  
18 state, he threw out the case after like about two hours.

19 MS. HARRIS: Okay.

20 THE JUROR: It was lack of evidence.

21 MS. HARRIS: Was it a criminal case then?

22 THE JUROR: Yeah, he was charged with assault and  
23 battery and robbing the other kid.

24 MS. HARRIS: I see. Was there anything about that  
25 experience that caused you to have feelings either pro or

1 con with regard to the criminal justice system?

2 THE JUROR: No, I'll be fair to the justice.

3 MS. HARRIS: Okay. Anything else?

4 MR. ROACHE: I don't have anything.

5 THE COURT: Okay. Mr. DeSouza, we're going to  
6 give you a number to call tomorrow. You're not on the final  
7 jury, you'll know when you call this number and you give  
8 them the jury summons, if your name is mentioned when you  
9 call, you report Thursday, Thursday at 9:00.

10 MS. SCAPICCHIO: Thank you very much.

11 MS. HARRIS: I question, do you think he  
12 understands English well enough? He answered you twice  
13 incorrectly.

14 THE COURT: I think he did. I think it was hard,  
15 but I think he did, so I'd like him to keep him in the pool.

16 MS. SCAPICCHIO: Okay.

17 THE COURT: Collins is next.

18 MS. SCAPICCHIO: She opposes these types of  
19 lawsuits.

20 THE COURT: Hi, Ms. Collins.

21 THE JUROR: Hello.

22 THE COURT: Let's see. I think we start with  
23 you.

24 MS. HARRIS: Good morning -- afternoon. I'm  
25 Mary Jo Harris, and I along with these gentlemen represent

1 Detective Tim Callahan. One of the questions that we  
2 actually had for you in the jury questionnaire, one of the  
3 questions is whether or not you oppose wrongful conviction  
4 cases or lawsuits, and I'm wondering, you indicated that you  
5 did oppose, and I'm just wondering if you could tell us a  
6 little bit about your feelings.

7 THE JUROR: What do you mean oppose?

8 MS. HARRIS: Let me just --

9 THE JUROR: Do I think it's right?

10 MS. HARRIS: There's a question that says people  
11 who are wrongfully convicted sometimes bring lawsuits  
12 against the police department. Do you favor or oppose this  
13 type of lawsuit, and you checked oppose. We're just  
14 wondering what your thoughts are because this is that kind  
15 of case obviously.

16 THE JUROR: I think if somebody did wrong, then  
17 they should have to pay for it, either monetarily or another  
18 way.

19 MS. HARRIS: Okay. So do I understand you to mean  
20 if somebody was convicted of a crime and the evidence comes  
21 in that suggests that they --

22 THE JUROR: Well, guilty of suppressing it?

23 MS. HARRIS: Then you would be in favor?

24 THE JUROR: They were wrong.

25 MS. HARRIS: Am I right in understanding that you



1 would -- that you're answering the question saying if it was  
2 shown that police officers did something wrong that you  
3 would have no problem hearing that case and making that  
4 decision if that was the evidence then?

5 THE JUROR: Correct.

6 MS. HARRIS: Now, conversely, if you are presented  
7 evidence where somebody was convicted of a crime and you  
8 didn't believe he should have been but there's not proof  
9 that the detective, here the defendant did anything wrong,  
10 would you have a hard time finding for the detective even if  
11 you believe that the case below should have come out  
12 differently?

13 THE JUROR: No, because I would have based it on  
14 the evidence that was presented to me.

15 MS. HARRIS: Okay. In this case, the plaintiff  
16 goes first and the defense puts on their case following  
17 that. So before you could make a judgment, what we would  
18 hope is that before you made a judgment that you would  
19 listen to both sides?

20 THE JUROR: Right.

21 MS. HARRIS: Have you been on a jury before?

22 THE JUROR: No, I went to school for paralegal.

23 MS. HARRIS: You did. Did you ever work for a law  
24 firm or something like that?

25 THE JUROR: No, I haven't.

1 MS. HARRIS: Gentlemen, do you have anything else?

2 MR. ROACHE: Good afternoon, Ms. Collins, my name  
3 is John Roache, and I represent former Commissioner Roache,  
4 no relation to me, and I also represent the City of Boston.  
5 I notice on your questionnaire you live in the City of  
6 Boston?

7 THE JUROR: South end.

8 MR. ROACHE: How long have you lived there?

9 THE JUROR: Nine and a half years.

10 MR. ROACHE: Have you ever had the bad experience  
11 with the city or any employees of the City of Boston?

12 THE JUROR: Maybe a bus driver or two.

13 MS. HARRIS: That's not -- that's somebody else.

14 THE JUROR: No.

15 MR. ROACHE: Would that experience in any way  
16 impact your decision as to whether or not the city is or not  
17 liable in this particular case?

18 THE JUROR: No, no.

19 MR. ROACHE: Have you had any dealings with the  
20 police department while you have lived in the City of  
21 Boston?

22 THE JUROR: Yes.

23 MR. ROACHE: Okay. Have those dealings been  
24 positive or negative?

25 THE JUROR: Positive.

1 MR. ROACHE: Okay. Have you ever dealt with  
2 former Police Commissioner Francis Roache?

3 THE JUROR: No.

4 MR. ROACHE: Do you know anything about him?

5 THE JUROR: No.

6 MR. ROACHE: That's all I have, thank you.

7 MS. SCAPICCHIO: Hi, I'm Rose Scapicchio. I  
8 represent Shawn Drumgold. He's the plaintiff in this case.  
9 If you were to listen to all of the evidence, I think I  
10 heard you say already, so I don't want to spend too much  
11 time, if at the end of the evidence, if you were to conclude  
12 Shawn Drumgold had proven his case and proved that Detective  
13 Callahan had withheld evidence from the prosecutors  
14 prosecuting his case and that resulted in an unfair trial to  
15 Shawn Drumgold, you could award him money damages for that?

16 THE JUROR: Yes.

17 MS. SCAPICCHIO: I have no further questions.  
18 Thank you, your Honor.

19 THE COURT: Okay. Ms. Collins, we're going to ask  
20 you to call this number, and you need your glasses it looks  
21 like. Call the number, you can have your jury number. When  
22 you call this number, you have to have your jury number. If  
23 you're part of the final jury, we'll see you Thursday  
24 morning. Juror number was on the summons you got.

25 Ms. Gibson. You start.

1 MS. SCAPICCHIO: Hi, Ms. Gibson, I'm Rose  
2 Scapicchio. I represent the plaintiff in this case,  
3 Shawn Drumgold. I had a couple of questions on your  
4 questionnaire. You noted on question 4 you had a doctor's  
5 appointment on 9-17. Is that an all day appointment that's  
6 going to prevent you from sitting on that day?

7 THE JUROR: No, it's not an all day appointment.  
8 I know I can probably reschedule the appointment, but, you  
9 know, whatever.

10 THE COURT: You can reschedule in the afternoon,  
11 that's all you need.

12 THE JUROR: I think it's scheduled right now at  
13 two, but that's nowhere I can get from here to there. I  
14 live a distance away.

15 THE COURT: Okay. Go on.

16 MS. SCAPICCHIO: I also noticed in your  
17 questionnaire question 27 when you were asked whether or not  
18 people who have been wrongfully convicted sometimes bring  
19 lawsuits against the police department. Do you favor or  
20 oppose these type of lawsuits, and your answer was not sure  
21 how to answer this question?

22 THE JUROR: Yes.

23 MS. SCAPICCHIO: Obviously police do their best  
24 but are not above the law. What do you mean by that?

25 THE JUROR: I mean, obviously you have seen and

1 heard sometimes things in the news that have happened that  
2 have involved police that were wrong in doing what they were  
3 doing and obviously have been convicted at a future date.

4 MS. SCAPICCHIO: So you were talking about police  
5 actually being charged with something?

6 THE JUROR: Yes.

7 MS. SCAPICCHIO: Okay. All right. Some people  
8 think that police make mistakes and people might be  
9 wrongfully convicted, but that's the price we pay for a  
10 police force.

11 THE JUROR: Exactly.

12 MS. SCAPICCHIO: You agree with that?

13 THE JUROR: Yes.

14 MS. SCAPICCHIO: Can you tell me why you agree  
15 with that?

16 THE JUROR: Say that one more time. I'm a little  
17 anxious here, bear with me.

18 MS. SCAPICCHIO: Deep breaths. Some people  
19 believe that police make mistakes and sometimes people are  
20 wrongfully convicted, but that's the price we pay for a  
21 police force. Do you agree with that?

22 THE JUROR: Well, no one is above error or what  
23 not, but, I mean, a police force is just that, a police  
24 force that is supposed to be enforcing the law.

25 MS. SCAPICCHIO: So if you listen to the evidence

1 and at the end of the trial came to the conclusion that  
2 Detective Callahan withheld some exculpatory evidence from  
3 the prosecutors in this case and that that resulted in Shawn  
4 Drumgold getting an unfair criminal trial, would you be able  
5 to award money damages to Shawn Drumgold or do you think  
6 it's just the price we pay?

7 THE JUROR: I think I need to know more  
8 information than what, in fact, what you call it, the  
9 exculpatory evidence.

10 THE COURT: Exculpatory evidence.

11 THE JUROR: I'm not even sure I understand even  
12 what that means even when it was presented in the courtroom  
13 when we were sitting.

14 MS. SCAPICCHIO: Okay. If there was evidence at  
15 trial that one of the important witnesses at trial had been  
16 promised certain things, had been given money by  
17 Detective Callahan, had been put up in a hotel room and  
18 promised things about pending cases and that information was  
19 not turned over to the prosecutors and Shawn Drumgold says  
20 that resulted in his wrongful conviction, under those  
21 circumstances, if you heard all that evidence, would you be  
22 able in those circumstances to award money damages, or do  
23 you think police make mistakes but we need to move on?

24 THE JUROR: Well, that's wrong, so obviously then  
25 I think we could award damages if they shouldn't have done

1 it, then obviously something needs to be done to correct  
2 that.

3 MS. SCAPICCHIO: Okay. If you had to listen to  
4 evidence of police officers vs. evidence of civilian  
5 witnesses, would you give the police witnesses any more  
6 weight because of their position as police officers and  
7 their obligation to tell the truth?

8 THE JUROR: I think everyone needs to tell the  
9 truth so they should be equally balanced.

10 MS. SCAPICCHIO: Great. Thank you so much.

11 THE COURT: Wait, you're not done yet.

12 MS. SCAPICCHIO: Just me, sorry.

13 THE JUROR: Just you.

14 MS. HARRIS: I'm Mary Jo Harris, and along with  
15 these gentlemen I represent Detective Callahan. As I'm  
16 listening to you, people who make normal human error and  
17 intentional human misconduct, would that be a distinction in  
18 your mind?

19 THE JUROR: Say that again.

20 MS. HARRIS: When you were asked by Ms. Scapicchio  
21 whether you felt that mistakes happen and that's the price  
22 we pay, do you distinguish in your mind between mistakes  
23 happening and --

24 THE JUROR: Somebody that did something  
25 intentional.

1 MS. HARRIS: Somebody did something intentionally  
2 and seeing the distinction between those things?

3 THE JUROR: Yes.

4 MS. HARRIS: So you could understand how a mistake  
5 could happen, but you would hold somebody accountable for  
6 doing something -- that was done intentionally?

7 THE JUROR: Something that was done intentionally,  
8 yes.

9 MS. HARRIS: You indicated on your questionairre  
10 that would like not to serve as a juror?

11 THE JUROR: Yes, it just makes me nervous,  
12 anxious, the whole thing, and then when you throw in, sorry,  
13 folks, but, you know, the police, just that whole idea that  
14 you're dealing with the police, and, you know, they might be  
15 wrongdoing in doing something, it just makes me even more  
16 anxious. I'm anxious anyway, but that made me even more  
17 anxious.

18 MS. HARRIS: And it makes you anxious that the  
19 police are parties to the case or that it's about a criminal  
20 case?

21 THE JUROR: Well, a criminal, both, both.

22 MS. HARRIS: All of these things cause you stress?

23 THE JUROR: Yes, a little, yeah. I mean, I know  
24 you're here in court, it's a case, and it's not just going  
25 to be fa-la-la-la.



1 MS. HARRIS: Do you think that the level of  
2 anxiousness that you feel about this would interfere with  
3 your ability to serve as a juror?

4 THE JUROR: Honestly, I don't know. I've never  
5 served.

6 MS. HARRIS: Do you have friends who are law  
7 enforcement or in policing? I think you mentioned you knew  
8 somebody in the CIA?

9 THE JUROR: A close friend that we have, his son.  
10 I was thinking afterwards, I didn't write it down, but I  
11 have a neighbor who I believe is still working for the State  
12 Police.

13 MS. HARRIS: And is there anything that you've  
14 learned in the course of those relationships that causes you  
15 to be fearful of the police?

16 THE JUROR: No, they happen to be high pressure.  
17 I can't say I'm fearful, no.

18 MS. HARRIS: Gentlemen?

19 MR. ROACHE: I don't have anything, thank you.

20 THE COURT: We will calm you down. We will calm  
21 you down. I'm going to give you a number to call tomorrow.  
22 You may not be on the final jury, so don't get anxious until  
23 you get the call. When you call this number, you need your  
24 juror number.

25 THE JUROR: The one I originally had because on

1 the receipt, on the form --

2 THE COURT: No, the original, whatever the number  
3 is, and if you're a member of the final jury, we'll see you  
4 on Thursday.

5 THE JUROR: Thursday?

6 THE COURT: Thursday, and I assure you it will be  
7 the best experience you have ever had.

8 THE JUROR: We shall see what happens. If I am  
9 not selected, do I have to continue to call on Friday to see  
10 if I would be because it says for three weeks? I wasn't  
11 quite sure.

12 THE CLERK: Ask Jim when you go downstairs.

13 THE COURT: I know everything except that. Thank  
14 you.

15 MS. HARRIS: Thank you very much.

16 MR. ROACHE: Your Honor, may I ask a question?

17 THE COURT: Sure.

18 MR. ROACHE: I know the last time we were in  
19 court, you said you had a one o'clock meeting with the  
20 Judges?

21 THE COURT: 1:30. I'm going to push it to 1:30.

22 MR. ROACHE: I wanted to make sure you weren't  
23 late.

24 THE CLERK: Juror No. 12.

25 THE COURT: Ms. O'Leary.

1 MS. HARRIS: Hi, good afternoon. I'm Mary Jo  
2 Harris. Along with my colleagues, we represent  
3 Detective Callahan in this case. I noticed going through  
4 your questionnaire that you have a boyfriend who works for  
5 the sheriff's department; do I have that right?

6 THE JUROR: Yes.

7 MS. HARRIS: What does he do with the sheriff's  
8 department?

9 THE JUROR: He's a teacher, so during the summer  
10 he works there as a youth counselor. They bring in youths  
11 from around the state and teach them about public safety.

12 MS. HARRIS: Is he interested in public safety as  
13 a career?

14 THE JUROR: No.

15 MS. HARRIS: Just as part of his teaching, more  
16 connected to teaching than it is to law enforcement sort of  
17 thing?

18 THE JUROR: Right.

19 MS. HARRIS: This is a case about a claim of a  
20 wrongful conviction. Is there anything about the nature of  
21 this case that could cause you to question whether you would  
22 be fair and impartial as a juror here?

23 THE JUROR: Not that I can think of.

24 MS. HARRIS: Do you have any -- have you had any  
25 prior experiences with law enforcement, positive or

1 negative?

2 THE JUROR: Aside from the occasional ticket, no.

3 MS. HARRIS: What's Caverns'?

4 THE JUROR: It's a finance planning magazine.

5 MS. HARRIS: No wonder I don't know anything about  
6 it. Any questions, gentlemen?

7 MR. ROACHE: I do. Ms. O'Leary, I notice in your  
8 questionnaire you lived on Beacon Street in Boston for about  
9 a year?

10 THE JUROR: Yes.

11 MR. ROACHE: How long have you lived --

12 THE JUROR: Prior to that I was in Cambridge for  
13 two years, and prior to that I was in the North End for  
14 two.

15 MR. ROACHE: During the period of time you've  
16 lived around the City of Boston, have you had positive or  
17 negative experiences with the city or any of its employees?

18 THE JUROR: Just my landlord.

19 THE COURT: Any employees of the city itself?

20 THE JUROR: No, I don't think so.

21 MR. ROACHE: That's all I have.

22 THE COURT: Ms. Scapicchio.

23 MS. SCAPICCHIO: Hi, my name is Rose Scapicchio.

24 I represent the Defendant Shawn Drumgold together with  
25 Mike Reilly. You're going to be asked in this case to

1 evaluate the testimony of a police officer vs. that of a  
2 civilian witness, and the allegations in this case are that  
3 Shawn Drumgold claims that Detective Callahan withheld some  
4 important information about a witness at his criminal trial  
5 and as a result of that he had an unfair trial. When you  
6 evaluate the testimony of a police officer and a civilian  
7 witness, would you give the police officer's testimony any  
8 more weight just because he was a police officer?

9 THE JUROR: Probably not.

10 MS. SCAPICCHIO: Okay. And in this case if you at  
11 the end of the trial came to the conclusion that  
12 Shawn Drumgold had proven his case that in fact  
13 Detective Callahan had withheld important evidence from the  
14 criminal prosecutors, would you be able to award money  
15 damages to Shawn Drumgold?

16 THE JUROR: If it was rightful, I don't see why  
17 not.

18 MS. SCAPICCHIO: Thank you.

19 THE COURT: Okay. Ms. O'Leary, we're going to ask  
20 you to call this number tomorrow. You're not on the final  
21 jury yet. Call this number after six. It's a 1-800 number,  
22 and you have your jury number, punch it in, and if you're on  
23 the final jury, we'll see you Thursday morning. Thank you  
24 very much.

25 Mark Troia is next. Hi.

1 THE JUROR: Hello.

2 THE COURT: Mr. Troia, start with  
3 Ms. Scapicchio.

4 MS. SCAPICCHIO: Thank you, my name is  
5 Rose Scapicchio. I represent Shawn Drumgold together with  
6 Mike Reilly.

7 THE JUROR: Right.

8 MS. SCAPICCHIO: In answer to your questionnaire  
9 at question 27 when you were asked people who have been  
10 wrongfully convicted sometimes bring lawsuits against the  
11 police department, do you favor or oppose these types of  
12 lawsuits, and you wrote, "Depends." Depends on what?

13 THE JUROR: It depends on the situation and the  
14 facts of the case.

15 MS. SCAPICCHIO: Okay. So you'd evaluate the  
16 evidence as it comes in and make a determination after you  
17 heard all the evidence?

18 THE JUROR: Yes.

19 MS. SCAPICCHIO: But you're not in general just  
20 opposed to plaintiff bringing a suit against a police  
21 officer?

22 THE JUROR: No, not at all.

23 MS. SCAPICCHIO: Not at all, okay. Now, in this  
24 case Shawn Drumgold alleges that Detective Callahan withheld  
25 some important information about an important witness at his

1 criminal trial and as a result of that he says he did not  
2 get a fair trial. You're going to be asked to evaluate the  
3 evidence of police officer witnesses vs. civilian witnesses.  
4 Would you give police officers any more weight because  
5 they're required to tell the truth or hold them higher, to a  
6 higher standard because they're required to tell the truth?

7 THE JUROR: No, not necessarily.

8 MS. SCAPICCHIO: You'd listen to the evidence and  
9 decide when you heard the evidence which way?

10 THE JUROR: Yes, exactly.

11 MS. SCAPICCHIO: And in this case if at the end of  
12 the trial you came to the conclusion that Shawn Drumgold had  
13 proven his case and had proven that Detective Callahan  
14 withheld some important evidence from an important witness  
15 and it resulted in Shawn having an unfair criminal trial,  
16 would you be able to award money damages to Shawn Drumgold?

17 THE JUROR: Of course.

18 MS. SCAPICCHIO: I don't have any further  
19 questions.

20 THE COURT: Attorney Harris.

21 MS. HARRIS: Hi, I'm Mary Joe Harris, and I  
22 represent Detective Callahan here. I saw from your  
23 questionnaire that in 2004 that you were mugged?

24 THE JUROR: Yes.

25 MS. HARRIS: Which is unfortunate. Was that in

1 the City of Boston?

2 THE JUROR: No, it was in Cambridge.

3 MS. HARRIS: Did you have an encounter with the  
4 Cambridge Police Department as a result of that?

5 THE JUROR: Yes, it was very positive. They  
6 responded in less than two minutes. It was very good.

7 MS. HARRIS: Was the person who assaulted you, was  
8 that person apprehended?

9 THE JUROR: No, they never were caught.

10 MS. HARRIS: And I also noticed that you have  
11 family who work for the U.S. Attorney's Office in Virginia;  
12 is that right?

13 THE JUROR: It's the Attorney General's office.

14 MS. HARRIS: Oh, okay. In what capacity?

15 THE JUROR: My brother-in-law was an Assistant  
16 Attorney General, so was my sister.

17 MS. HARRIS: Did you ever share experiences with  
18 them, you know, talk with them?

19 THE JUROR: I lived with them for ten years. I  
20 know their friends, they're all lawyers. I was bombarded  
21 with stuff.

22 MS. HARRIS: Poor you.

23 THE JUROR: It was interesting.

24 MS. HARRIS: Was there anything about the stories  
25 you told them or any of their experiences that they shared



1 with you that caused you to have either favorable or  
2 unfavorable perceptions?

3 THE JUROR: No. The one thing that came out  
4 consistently, you can never anticipate what was going to  
5 come up in each different story, there's some weird twist or  
6 unusual circumstance, people are people are people, they  
7 have their faults.

8 MS. HARRIS: So there was no sort of thing that  
9 you took away from it that the police were all rogues or  
10 they'll all angels?

11 THE JUROR: No, none of that.

12 MS. HARRIS: And forgive me, I don't mean to be  
13 invasive, but you have indicated that you have to take  
14 medication every four hours, and that was something we  
15 should be aware of?

16 THE JUROR: Yes, indeed.

17 MS. HARRIS: Would that be a problem if you were  
18 knowing that we sit from 9 to 1 and we have breaks during  
19 the course of the day?

20 THE JUROR: My main concern is the length of the  
21 case. I volunteered for a Parkinson's study at Brigham and  
22 Women's, and they kind of wanted me to start some time in  
23 September, but...

24 MS. HARRIS: Could you participate in that study  
25 in the afternoons do you know because we're sitting only

1 9 to 1 and not on Fridays?

2 THE JUROR: Actually I could. The schedule is  
3 very flexible.

4 THE COURT: Great, okay.

5 MS. HARRIS: Terrific.

6 THE COURT: That would be great. We'll take  
7 whatever breaks you need. We've had all different kinds of  
8 people on juries, I've had a pregnant woman on a jury that  
9 every time she needed a break, she'd go like this, and we'd  
10 break, so whatever you need, we can accommodate.

11 THE JUROR: Right now my meds are wearing off.  
12 This is as bad as they get, so I'm pretty good, so if I'm  
13 twisting or wiggling, it's no big deal.

14 MS. HARRIS: Mr. Roache.

15 MR. ROACHE: Good afternoon, Mr. Troia. I  
16 represent as a client the City of Boston, and I notice that  
17 you live in Jamaica Plain and you have for the past six  
18 months?

19 THE JUROR: I lived there literally about three  
20 weeks ago. I lived in Cambridge for 14 years, and I sold my  
21 house, and I'm living with a friend temporarily.

22 MR. ROACHE: During the time you lived in  
23 Cambridge or in Boston, have you had any positive or  
24 negative responses with anyone employed by the City of  
25 Boston?

1 THE JUROR: I imagine so, but I can't remember any  
2 off the top of my head.

3 MR. ROACHE: Do you know what type of negative  
4 experience you may have had?

5 THE JUROR: Actually I'd say postal worker, but  
6 they didn't work for the City of Boston.

7 THE COURT: Those are the Feds, thank you very  
8 much.

9 MR. ROACHE: We'll blame the Feds on that one.  
10 The fact that the City of Boston is a potential defendant in  
11 this case, would that affect your ability to or would you if  
12 you decided that there was a wrongful conviction, would you  
13 consider the fact that the city a potential defendant award  
14 more money or less money to Mr. Drumgold?

15 THE JUROR: No, that wouldn't persuade me one way  
16 or the other.

17 MR. ROACHE: It doesn't one way or the other?

18 THE JUROR: No.

19 THE COURT: Mr. Troia, we ask you to call this  
20 number after 6:00 tomorrow. You're not necessarily on the  
21 final jury, but if you call that number with your jury  
22 number, you'll know whether you're on the final jury, and if  
23 you are, we'll see you Thursday morning. Thank you.

24 THE CLERK: Juror No. 17.

25 THE COURT: Hello, Ms. Foley.

1 MS. HARRIS: Good afternoon, I'm Mary Jo Harris,  
2 and along with my colleagues here, I represent  
3 Detective Callahan. I understand that you are at Phillips  
4 Andover, is that right?

5 THE JUROR: Yes.

6 MS. HARRIS: Have you lived in the city or are you  
7 from the area?

8 THE JUROR: I'm from Los Angeles.

9 MS. HARRIS: When did you move to Massachusetts?

10 THE JUROR: About three years ago.

11 MS. HARRIS: Can you tell me the case that we have  
12 here that we're representing is a case involving a claim of  
13 a wrongful conviction, and my client denies that he  
14 committed any kind of misconduct that would have impacted  
15 the underlying criminal case. Is there anything about this  
16 type of case that causes you to have any concern or that  
17 makes you question whether you would be able to sit as an  
18 impartial juror?

19 THE JUROR: No, not based on what you just told  
20 me.

21 MS. HARRIS: Since the time that you've been in  
22 Massachusetts, have you had any experiences with law  
23 enforcement, positive or negative?

24 THE JUROR: No.

25 MS. HARRIS: Okay. At Phillips Andover, you're

1 dealing with kids, I assume. Is there anything, and I  
2 should tell you briefly the underlying case here stems from  
3 the killing of a young girl, and many of the witnesses who  
4 testified in the 1989 trial were children themselves.

5 THE JUROR: Okay.

6 MS. HARRIS: Is there anything about your  
7 experience working with children that would cause you to  
8 question their ability to testify as witnesses?

9 THE JUROR: No.

10 MS. HARRIS: I realize that's a very general  
11 question.

12 THE JUROR: I work with high school students, so I  
13 don't know the age of these students or these children. I  
14 can't think of anything.

15 MS. HARRIS: You didn't indicate that you have any  
16 experience or affiliation, friendship, family, with any law  
17 enforcement members? A world outside of your world, I  
18 assume?

19 THE JUROR: I'm distant but nothing immediate.

20 MS. HARRIS: Okay.

21 MR. CURRAN: Did you live in Los Angeles for a  
22 period of time?

23 THE JUROR: I lived, was born in Los Angeles  
24 County, so it's outside of the city.

25 MR. CURRAN: I see you went to Stanford

1       undergrad.?

2               THE JUROR:   Yes.

3               MR. CURRAN:   Then stayed in California, then went  
4       to Michigan.   What did you get a graduate degree?

5               THE JUROR:   Educational technology, and it's  
6       interdepartmental, interdisciplinary is what I was trying to  
7       say, so it's counseling and psychology and technology.

8               MR. CURRAN:   Right.   While you were living in  
9       California, there has been some high profile criminal cases  
10      but also some notoriety relative to the Los Angeles Police  
11      Department, some of it favorable, some of it not so  
12      favorable.   Were you aware of any of that going on in  
13      California in Los Angeles?

14              THE JUROR:   There have been lots of cases, some  
15      wrongful suits, some, yeah, I've seen a lot of things on  
16      TV.

17              MR. CURRAN:   Right.

18              THE JUROR:   I wasn't involved in any of it.

19              MR. CURRAN:   By watching it and living in  
20      California, did you form an opinion one way or the other in  
21      regard to law enforcement itself or the criminal justice  
22      system that would in any way impact your ability to be fair  
23      and impartial to Mr. Evans?

24              THE JUROR:   No, that was a long time ago.

25              MR. CURRAN:   Thank you very much.   I appreciate

1 your time.

2 THE COURT: Ms. Scapicchio.

3 MS. SCAPICCHIO: Hi. My name is Rose Scapicchio.  
4 I together with Mike Reilly, we represent Shawn Drumgold in  
5 this case. I have a couple of questions for you. In this  
6 case Shawn Drumgold alleges that Detective Callahan withheld  
7 some important evidence about an important witness in his  
8 criminal trial, and as a result he didn't get a fair trial.  
9 You're going to be asked to evaluate the testimony of police  
10 officer witnesses vs. civilian witnesses. Would you give  
11 the police officer's testimony any more credit just because  
12 they were a police officer?

13 THE JUROR: Not if I was instructed not to, I  
14 would try to be as partial for all the rules.

15 MS. SCAPICCHIO: So they wouldn't get sort of a  
16 head start just because they were police?

17 THE JUROR: I'd listen.

18 MS. SCAPICCHIO: You'd listen to the evidence and  
19 evaluate the testimony as the witnesses testified?

20 THE JUROR: Yes.

21 MS. SCAPICCHIO: And in this case if at the end of  
22 the trial you concluded that Shawn Drumgold did prove his  
23 case that Detective Callahan did withhold important evidence  
24 regarding an important witness that resulted in an unfair  
25 trial, would you be able to award monetary damages to

1 Shawn Drumgold?

2 THE JUROR: You're saying once I reviewed  
3 everything?

4 MS. SCAPICCHIO: Yes, if you came to the  
5 conclusion that he had proven his case, could you award him  
6 monetary damages?

7 THE JUROR: I think I could, if I think the word  
8 is the preponderance of the evidence.

9 MS. SCAPICCHIO: Thank you.

10 THE COURT: Okay. Ms. Foley, we're going to ask  
11 you to call this number tomorrow after six. You're not on  
12 the final jury yet, this is a preliminary screening, and you  
13 have to dial in your juror code, which was on the summons,  
14 okay, and if you're on the final jury, we'll see you  
15 Thursday morning at 9:00.

16 THE JUROR: If I'm not sure what my employer does  
17 with the salary, pay, could I follow up if it could be a  
18 financial hardship if they don't pay?

19 THE COURT: You need to find that out and call  
20 Ms. Molloy. The Court pays a little bit.

21 THE JUROR: Right.

22 THE CLERK: I can bring her down to talk to Jim,  
23 the jury administrator will know.

24 THE COURT: Or you can call your employer right  
25 now. So she'll take you down, and if there's an issue, let



1 us know. Thank you very much.

2 MS. SCAPICCHIO: Thank you.

3 THE COURT: The law is on the state side they have  
4 to pay, on the federal side they don't.

5 MS. HARRIS: More than three day on the state.

6 THE COURT: You're Ms. Millard?

7 THE JUROR: Yes.

8 THE COURT: Ms. Scapicchio, you start.

9 MS. SCAPICCHIO: Hi, I'm Rose Scapicchio.  
10 Together with Mike Reilly, we represent Shawn Drumgold.  
11 He's the plaintiff in this case. The allegations are that  
12 Shawn Drumgold says that Detective Callahan withheld some  
13 important evidence about an important witness in his  
14 criminal trial, and as a result he didn't get a fair trial.  
15 You're going to be asked to evaluate the testimony of police  
16 officer witnesses vs. testimony of civilian witnesses.  
17 Would you give any more credit to the police officer  
18 witnesses because they're police officers and they're  
19 expected to tell the truth?

20 THE JUROR: No.

21 MS. SCAPICCHIO: So you'd evaluate the evidence  
22 after you heard it based on whatever the witness said?

23 THE JUROR: Correct.

24 MS. SCAPICCHIO: And some people think that police  
25 officers make mistakes and people are wrongfully convicted,

1 but that's the price we pay to have a police force. Do you  
2 agree with that?

3 THE JUROR: Yes.

4 MS. SCAPICCHIO: Okay. Why do you say you would  
5 agree with that, can you explain that a little bit to me.

6 THE JUROR: I would say sometimes circumstantial  
7 evidence relates to that. I don't think all cops are  
8 honest.

9 MS. SCAPICCHIO: What do you mean?

10 THE JUROR: I mean, sometimes circumstances can  
11 change the testimony or the evidence or things like that. I  
12 think, you know history shows not all policemen are honest,  
13 not all people are honest.

14 MS. SCAPICCHIO: So you'd evaluate the testimony  
15 based on whatever you heard from the witness stand?

16 THE JUROR: Correct.

17 MS. SCAPICCHIO: And when you evaluated the  
18 testimony of a police officer vs. a civilian witness, nobody  
19 gets a head start, everybody starts on the same footing, is  
20 that what you're saying?

21 THE JUROR: Yes.

22 MS. SCAPICCHIO: In this case if you listened to  
23 all the evidence and at the end of the trial decided that  
24 Shawn Drumgold had proven his case that Detective Callahan  
25 had withheld evidence that resulted in an unfair trial to

1 Shawn Drumgold, could you award money damages?

2 THE JUROR: If that was part of what I needed to  
3 do, I'm not sure, I've never sat on a jury before so I'm not  
4 sure how that would work.

5 MS. SCAPICCHIO: Okay. Thank you very much.

6 THE COURT: One more question.

7 MS. HARRIS: Good afternoon, Mary Jo Harris, and I  
8 represent Detective Callahan along with my colleagues. I  
9 think I saw that your son had a DUI?

10 THE JUROR: Yes.

11 MS. HARRIS: Did his experience going through the  
12 system as he did, did that color your experience or your  
13 perception of law enforcement?

14 THE JUROR: No. I'm glad they caught him. He was  
15 definitely out of control driving drunk, and I'm glad he  
16 didn't hurt himself or anybody else with him or somebody  
17 innocent, no, so, it didn't color it.

18 MS. HARRIS: Did you feel he was treated fairly by  
19 the police?

20 THE JUROR: Yes.

21 MS. HARRIS: Do you have any other experience,  
22 positive or negative, with law enforcement? You had  
23 mentioned that you think that not all police are honest?

24 THE JUROR: I think all people are not honest, so  
25 I mean, is it all police, no, because I've worked with

1 police officers doing DARE in the school systems and things  
2 like that, so, yes, where I come from, I know several of the  
3 police officers in my town.

4 MS. HARRIS: Okay. So you're not speaking from  
5 negative personal experience?

6 THE JUROR: No, I'm just thinking that all people  
7 can hide things.

8 MS. HARRIS: Anything else for you gentlemen?

9 MR. ROACHE: I'm fine. Thank you.

10 THE COURT: Ms. Millard, don't run away yet. This  
11 is a number you have to call tomorrow after 6:00. After you  
12 call this number, you'll have to dial your juror code, which  
13 came with your summons, if you're on the final jury, we'll  
14 see you Thursday morning. We have 11.

15 Hi, Mr. Brennan?

16 THE JUROR: Yes.

17 THE COURT: We meet again.

18 THE JUROR: We meet again.

19 THE COURT: I think you start.

20 MS. HARRIS: Hello, Mr. Brennan, I'm Mary Jo  
21 Harris and with Mr. Curran I represent Detective Callahan.

22 MR. CURRAN: Good afternoon.

23 THE JUROR: Good afternoon.

24 MS. HARRIS: I believe that you had indicated you  
25 may have family members who are Boston Police officers. Do

1 I have that right?

2 THE JUROR: I do have a brother who's a Boston  
3 cop.

4 MS. HARRIS: You do?

5 THE JUROR: Yes.

6 MS. HARRIS: Who is he?

7 THE JUROR: My brother.

8 MS. HARRIS: How long has he been a Boston police  
9 officer?

10 THE JUROR: Sixteen years.

11 MS. HARRIS: And is there anything -- obviously  
12 Detective Callahan is retired now, but for a very long time  
13 he was a Boston police officer and retired, what, three  
14 years ago?

15 DETECTIVE CALLAHAN: Yes.

16 MS. HARRIS: But would the fact that Mr. Callahan  
17 would that bias you in any way toward or against  
18 Mr. Callahan in this case?

19 THE JUROR: I would say no.

20 MS. HARRIS: Do you have any -- we've explained to  
21 you this is a wrongful conviction case where the plaintiff  
22 is alleging that he received an unfair trial because of  
23 actions on the part of Mr. Callahan that Mr. Callahan  
24 denies, would you have any problem listening to the entire  
25 case and taking in the evidence from all of the witnesses

1 before coming to any conclusions one way or the other?

2 THE JUROR: No.

3 MS. HARRIS: Have you served on a jury before?

4 THE JUROR: I have.

5 MS. HARRIS: That's what I thought. In a federal  
6 case, is that right?

7 THE JUROR: Yes, I have.

8 MS. HARRIS: Can you tell me just briefly what  
9 kind of case that was?

10 THE JUROR: It was a drug smuggling case.

11 MS. HARRIS: So it was a criminal case?

12 THE JUROR: Criminal case, correct.

13 MS. HARRIS: Was it here in this courthouse?

14 THE JUROR: It was.

15 MS. HARRIS: Do you remember who the prosecutor or  
16 defense attorneys were?

17 THE JUROR: No.

18 MS. HARRIS: Do you remember who the Judge was?

19 THE JUROR: No.

20 MS. HARRIS: Was there anything about that?

21 THE JUROR: I'm not good with names, that's why I  
22 said he was my brother.

23 MS. HARRIS: Was there anything about the  
24 experience that you had serving on that jury that caused you  
25 to question any aspect of the criminal justice system?

1 THE JUROR: No.

2 MS. HARRIS: Were there police officers or federal  
3 officers who testified in that case?

4 THE JUROR: Yes, there was.

5 MS. HARRIS: And did anything about the manner the  
6 way in which they testified cause you to question the ethics  
7 or the integrity of those law enforcement officers without  
8 getting into the case?

9 THE JUROR: No, I don't think so, no.

10 MS. HARRIS: Anything else, gentlemen?

11 MR. ROACHE: Mr. Brennan, I noticed you graduated  
12 from Brighton High School?

13 THE JUROR: Yes.

14 MR. ROACHE: Are you from the City of Boston?

15 THE JUROR: Yes, I am.

16 MR. ROACHE: Do you still live in the City of  
17 Boston?

18 THE JUROR: Yes, I do.

19 MR. ROACHE: How long have you lived in the City?

20 THE JUROR: My whole life.

21 MR. ROACHE: That's --

22 THE JUROR: Forty-four years.

23 MR. ROACHE: Forty-four years.

24 THE JUROR: Same address.

25 MR. ROACHE: During that period of time, 44 years,

1 have you had any sort of positive or negative experience  
2 with the City of Boston itself?

3 THE JUROR: Positive or negative, no, good  
4 experiences, no positive, no negative, everything's -- I  
5 agree.

6 MR. ROACHE: Have you had any difficulty dealing  
7 with any employees of the City of Boston?

8 THE JUROR: No.

9 MR. ROACHE: How about with any police officers  
10 employed by the City of Boston? Have you ever dealt with  
11 them in a negative fashion?

12 THE JUROR: There was one time I had a situation  
13 with a Boston police officer, and he's been since let go.  
14 He was kind of a nut.

15 MS. HARRIS: I can't imagine.

16 MR. ROACHE: Could you describe what kind of  
17 situation that was?

18 THE JUROR: He was a -- I could be specific, but  
19 he was a pedophile, and he was messing around with the young  
20 kids in the neighborhood, and I called him on it and he got  
21 chased off.

22 MS. HARRIS: What neighborhood was this?

23 THE JUROR: West Roxbury.

24 MR. ROACHE: West Roxbury?

25 THE JUROR: Yes.



1           MR. ROACHE: And did that experience in any way  
2 have an impact on your feelings about the Boston Police  
3 Department?

4           THE JUROR: No, just him.

5           MR. ROACHE: Just that one particular officer?

6           THE JUROR: Just that one.

7           MR. ROACHE: Did that experience have any negative  
8 impact on your feelings about the City of Boston?

9           THE JUROR: No.

10          MR. ROACHE: That's all I have.

11          THE COURT: Ms. Scapicchio.

12          MS. SCAPICCHIO: I represent Shawn Drumgold  
13 together with Mike Reilly. Your brother being a Boston  
14 police officer, in this case Shawn Drumgold alleges that  
15 Detective Callahan withheld some important evidence about an  
16 important witness at his criminal trial that resulted in him  
17 having an unfair criminal trial. You're going to be asked  
18 to evaluate the testimony of police officers vs. the  
19 testimony of civilian witnesses. Given that your brother is  
20 a police officer and it looks like your brother-in-law is in  
21 law enforcement and another brother is a military police  
22 officer.

23          THE JUROR: Retired military police.

24          MS. SCAPICCHIO: Retired, okay. Would it be  
25 difficult for you or would you give any more credit to the

1 police department and their witnesses as opposed to civilian  
2 witnesses?

3 THE JUROR: No.

4 MS. SCAPICCHIO: Okay. Why not?

5 THE JUROR: I think I would look at both sides of  
6 the coin and see what we got.

7 MS. SCAPICCHIO: So your brother doesn't get any  
8 edge at all?

9 THE JUROR: No.

10 MS. SCAPICCHIO: Let me ask you this, if you  
11 listened to all of the evidence in this case and you decided  
12 at the end of the trial that Shawn did prove his case and  
13 that Detective Callahan did withhold important evidence  
14 about an important witness from prosecutors that resulted in  
15 an unfair trial, could you award money damages to  
16 Shawn Drumgold?

17 THE JUROR: Is that up to the jurors or is that up  
18 to the Judge?

19 MS. SCAPICCHIO: If it were up to you to award  
20 money damages, could you award money damages?

21 THE JUROR: If it was proven that he was, yeah,  
22 probably.

23 MS. SCAPICCHIO: And would the fact that you live  
24 in the City of Boston enter into your mind in terms of  
25 awarding damages?

1 THE JUROR: With what's going on, a lot of things,  
2 you know, the DNA and all this stuff, a lot of guys are  
3 coming out of prison that didn't do things, I don't know.

4 MS. SCAPICCHIO: So let me ask but in terms of  
5 money damages, because you live in the City of Boston, would  
6 that have an effect that you could award money damages  
7 against the City of Boston?

8 THE JUROR: It's hard to say. I don't know. I  
9 never really put any thought into it. I mean, what's right  
10 is right, and what's wrong is wrong, I would imagine.

11 MS. SCAPICCHIO: Because the money damages would  
12 come out of the budget out of the City of Boston wouldn't  
13 have an effect on your ability to award damages?

14 MS. HARRIS: Objection.

15 THE COURT: The objection is sustained.

16 MS. SCAPICCHIO: Okay, I'll ask another question.  
17 Some people think that police make mistakes and people are  
18 wrongfully convicted and that's the price we pay to have a  
19 police force. Do you agree with that?

20 THE JUROR: Do I agree with that?

21 MS. SCAPICCHIO: Yes.

22 THE JUROR: No.

23 MS. SCAPICCHIO: Why not?

24 THE JUROR: I don't -- state that again, please.

25 MS. SCAPICCHIO: Sure. Some people think that

1 police make mistakes and people are wrongfully convicted but  
2 that's the price we pay to have a police force?

3 THE JUROR: I have no opinion on that. I don't  
4 agree with that, no.

5 MS. SCAPICCHIO: Why not?

6 THE JUROR: I just don't. I just don't agree with  
7 it. People make mistakes, I don't know, criminals make  
8 mistakes, police make mistakes.

9 MS. SCAPICCHIO: Okay. So in a case where the  
10 evidence suggested that the police officer intentionally  
11 withheld evidence, would you be able to award damages in a  
12 case like that?

13 THE JUROR: It would have to be proven, I guess,  
14 right?

15 MS. SCAPICCHIO: Assuming it was, would you be  
16 able to award damages in a case like that?

17 THE JUROR: I would imagine. I mean --

18 MS. SCAPICCHIO: Would you have some difficulty?

19 THE JUROR: Yeah, you know, I'd have to -- I don't  
20 know.

21 MS. SCAPICCHIO: Okay. Can you explain why you  
22 think you might have some difficulty?

23 THE JUROR: I never really thought of it. I never  
24 thought about it.

25 MS. SCAPICCHIO: I know they're hard questions,

1 nobody really thinks in the abstract like this.

2 THE JUROR: I would imagine the person deserves  
3 compensation for being incarcerated if he wasn't guilty.

4 MS. SCAPICCHIO: Okay. If the issue wasn't guilt  
5 or innocence and the issue was whether or not evidence was  
6 withheld from prosecutors in this case, would you be able  
7 under those circumstances to award money damages?

8 THE JUROR: Once again, it would have to be  
9 proven, yeah, I would imagine.

10 THE COURT: I think that's enough. Thank you very  
11 much. We're going to ask you to call this number tomorrow  
12 after 6:00.

13 MR. CURRAN: Do you get along with your brother?

14 THE JUROR: He's my brother.

15 THE COURT: 6:00, call this number.

16 THE JUROR: 6:00?

17 THE COURT: Tomorrow, Wednesday.

18 THE JUROR: Okay.

19 THE COURT: You use your juror number and you'll  
20 know from that call whether you're on the final jury and if  
21 you are we'll see you Thursday morning. Okay. Thank you  
22 very much.

23 MS. HARRIS: Thank you.

24 MS. SCAPICCHIO: Thank you.

25 THE COURT: This is the last person we're going to

1 interview is Mr. Scott. You're moving right into legal  
2 questions, it's complicated. Hi, Mr. Scott.

3 THE JUROR: Good afternoon, your Honor.

4 THE COURT: I think we start with  
5 Ms. Scapicchio.

6 MS. SCAPICCHIO: Hi, Mr. Scott, my name is  
7 Rose Scapicchio. Together with Mike Reilly we represent the  
8 plaintiff in this case, Shawn Drumgold.

9 THE COURT: So down a bit, you talk very fast.

10 MS. SCAPICCHIO: I have a couple questions based  
11 on your questionnaire. My niece's wedding in North Carolina  
12 on the evening, you wouldn't be in court on Monday, the  
13 21st. We're not sitting that whole week, so that would not  
14 be a problem for you?

15 THE JUROR: That would not be a problem.

16 MS. SCAPICCHIO: You wouldn't have to leave until  
17 when?

18 THE JUROR: The Friday preceding.

19 THE COURT: That's fine.

20 MS. SCAPICCHIO: That would work out because we're  
21 not sitting on Fridays. This case involves Shawn Drumgold's  
22 allegation that Detective Callahan withheld some important  
23 evidence about an important witness from the prosecutors in  
24 this case. You're going to be asked to evaluate the  
25 evidence from police officer testimony vs. civilian witness

1 testimony. Would you give the police any more weight  
2 because they're police officers?

3 THE JUROR: I don't think that I would, no.

4 MS. SCAPICCHIO: When you saw you don't think you  
5 would, is there any hesitation about whether or not you  
6 would?

7 THE JUROR: Well, I've never been in that  
8 situation before so I'm kind of supposing, but I don't think  
9 I would.

10 MS. SCAPICCHIO: So they don't get a head start at  
11 all just because they're police officers?

12 THE JUROR: No.

13 MS. SCAPICCHIO: Some people think that police  
14 officers make mistakes and people are wrongfully convicted,  
15 but that's the price we pay for having a police force. Do  
16 you agree with that statement?

17 THE JUROR: Well, I know people are wrongly  
18 convicted. I believe in that, but the price we pay for a  
19 police force, no, I don't think I would buy that.

20 MS. SCAPICCHIO: Okay. And in this case if at the  
21 end of the trial you came to the conclusion that  
22 Shawn Drumgold had proven his case and that Detective  
23 Callahan did in fact withhold important evidence from an  
24 important witness that resulted in an unfair trial to  
25 Shawn Drumgold, would you able to award him money damages?

1 THE JUROR: I certainly would, yes, if that were  
2 my duty to do that, yes.

3 MS. SCAPICCHIO: And John Daley, the neighbor --

4 THE JUROR: Yes.

5 MS. SCAPICCHIO: -- that we talked about at  
6 sidebar, how well did you know him?

7 THE JUROR: He was a social acquaintance, went to  
8 parties, and he was a neighbor that was a few houses away,  
9 and we interacted socially but, you know, not terribly well,  
10 certainly wasn't a best friend or any one of that category,  
11 plus I really have not socialized with him probably in 25 or  
12 30 years.

13 MS. SCAPICCHIO: Okay. But if you were asked to  
14 decide whether or not he was telling the truth or not  
15 telling the truth, would the fact that you socialized him  
16 before come into your decision when you're trying to  
17 determine whether he was telling the truth or not?

18 THE JUROR: I don't believe that it would.

19 MS. SCAPICCHIO: Thank you.

20 THE COURT: Ms. Harris.

21 MS. HARRIS: Good afternoon. I'm Mary Jo Harris,  
22 and I represent Detective Callahan along with Hugh Curran.  
23 I just want to make sure that the John Daley that we're  
24 talking about, this is somebody who was employed by the  
25 Boston Police Department?



1 THE JUROR: Yes, who lived on Flames Road in  
2 Marshfield at the time.

3 MS. HARRIS: Okay. Was there anything in your  
4 social encounters with him that was negative in any way?

5 THE JUROR: No.

6 MS. HARRIS: Just sort of a neutral guy from the  
7 neighborhood?

8 THE JUROR: Yes, seemed like a very nice fellow.

9 MS. HARRIS: I noticed that in your juror  
10 questionnaire, you mentioned that you have a number of  
11 family members or extended family members who were involved  
12 in law enforcement?

13 THE JUROR: Yes.

14 MS. HARRIS: Is there anything about their  
15 experiences in law enforcement, any experiences that they  
16 may have shared with you that causes you to have an opinion  
17 one way or the other about the ethics or the integrity of  
18 law enforcement?

19 THE JUROR: No.

20 MS. HARRIS: I saw, I think it's your stepbrother  
21 who was --

22 THE JUROR: Yeah, step, I have two stepbrothers,  
23 one's in the State Police, one's in the Justice  
24 Department.

25 MS. HARRIS: Okay. And there's been nothing that

1 they've shared with you that has caused you to question  
2 policing or the criminal justice system one way or the  
3 other?

4 THE JUROR: No, not at all.

5 MS. HARRIS: You had mentioned that you knew that  
6 wrongful convictions occur. Have you ever given thought to  
7 the reasons why wrongful convictions occur? I don't know if  
8 this is something that's something that's new to you.

9 THE JUROR: No, I've never really thought about it  
10 a great deal, I just know that they do occur from, you know,  
11 reading the newspaper, and, you know, particularly being  
12 interested in science, DNA and hearing about those  
13 situations and reading books in general.

14 MS. HARRIS: Okay. Do you see a distinction in  
15 your mind between a wrongful conviction that may have  
16 occurred for otherwise innocent reasons, and by that I mean  
17 for reasons other than deliberate behavior or misconduct?

18 THE JUROR: Certainly. I certainly could discern  
19 that and understand that there are different reasons for  
20 wrongful convictions, yes.

21 MS. HARRIS: Would you have any difficulty if you  
22 came to the conclusion that the conviction in this case was  
23 an improper one but wasn't attributable to the misconduct of  
24 Detective Callahan, would you have any problem in not  
25 awarding money damages or not finding Mr. Callahan liable?

1 THE JUROR: No, I would have no problem with  
2 that.

3 MS. HARRIS: Gentlemen.

4 MR. ROACHE: Just briefly, Mr. Scott, you said you  
5 read books about wrongful convictions?

6 THE JUROR: Yes.

7 MR. ROACHE: From your reading, you learned about  
8 wrongful convictions?

9 THE JUROR: Just reading newspapers, right.

10 MR. ROACHE: Have you read anything in particular  
11 that you can recall about any particular case?

12 THE JUROR: No, no specific cases, no.

13 MR. ROACHE: Have you ever heard anything about  
14 this case, the Shawn Drumgold case?

15 THE JUROR: Certainly at the time when it took  
16 place 20 plus years ago, it was in the newspapers and I  
17 remember reading about that.

18 MR. ROACHE: Okay. Have you read anything  
19 recently about Shawn Drumgold?

20 THE JUROR: No.

21 MR. ROACHE: Have you heard anything on the news  
22 or on the radio about Shawn Drumgold?

23 THE JUROR: No, I have not.

24 MR. ROACHE: Do you know a person by the name of  
25 Richard Lehr who was a reporter from the Boston Globe?

1 THE JUROR: No, I do not.

2 MR. ROACHE: Have you ever read anything by  
3 Richard Lehr concerning Mr. Drumgold?

4 THE JUROR: Not that I'm aware of.

5 MR. ROACHE: That's all I have.

6 THE COURT: Mr. Scott, we're going to ask you to  
7 call this number at 6:00 tomorrow. We need your jury number  
8 at the time, and when you call the number, you'll find out  
9 if you're on the final jury, and if you are on the final  
10 jury, we'll see you Thursday morning at 9:00. Thank you.

11 MR. CURRAN: Judge.

12 THE COURT: Yes.

13 MR. CURRAN: A major portion of their case has to  
14 do with the diary notes of John Daley, some of which are  
15 highly pretentious.

16 THE COURT: Not much of that came in the last  
17 time.

18 MS. HARRIS: It was the second phase of the trial.

19 MR. ROACHE: Which will be objectionable at the  
20 time if we try to enter it, your Honor, as far as relevance  
21 is concerned.

22 THE COURT: We'll go through that again. I mean,  
23 he said he didn't think that would affect him. It's a  
24 25-year-old relationship.

25 MS. HARRIS: I believe that Daley was the head of

1 homicide for at least a portion of the time, so he's more of  
2 a prominent player than some of the other.

3 MR. CURRAN: Daily was the head of the homicide  
4 until August, September. McNelly got appointed in  
5 September, the trial started at the end of, September and  
6 McNelly said I got appointed in August, was on vacation,  
7 first day I reported to the job was September.

8 THE COURT: Let me think about it. We now have  
9 12, we need 14, so let me think about it overnight.

10 MR. CURRAN: I like him for the initial phase, but  
11 the issue we then have is if there's ever a second phase.

12 THE COURT: Let me think about that. 13, sorry,  
13 13. So if you want to look at my list so that we all share  
14 the same list, we know who's in and who's out, and I'll see  
15 you tomorrow morning at 9:00.

16 MS. SCAPICCHIO: Judge, I just have one question.  
17 Is 20 going to get us their 3 challenges? I'm just  
18 wondering is the city getting separate challenges?

19 THE COURT: Actually, no, the 3 is for the  
20 defendants as a group actually. What did I do the last  
21 time, do you recall?

22 MR. ROACHE: I don't recall specifically what we  
23 did the last time, but since this is a bifurcated case, I  
24 think the city and Francis Roache should have their own set  
25 of peremptories.

1 THE COURT: But then that would mean it would be 6  
2 per side.

3 MS. SCAPICCHIO: Yes, that was my question.

4 THE COURT: I don't remember. Let me check what I  
5 did the last time, but, as I said, we have time, we have  
6 enough people, so let me reserve the issue of Mr. Scott and  
7 let me think about that. I mean, I think technically under  
8 the rules if it's a joint defense essentially, in other  
9 words, the defendants are not really operating at cross  
10 purposes, I could give you three challenges as a group. On  
11 the criminal side, I ordinarily can affect that. Let me  
12 think a little bit about that, okay.

13 MR. CURRAN: If we're starting Thursday, do we  
14 just have a line-up and if there's any issues with regards  
15 to CORI records from civilian witnesses?

16 THE COURT: Say that again.

17 MR. CURRAN: CORI issues for civilians, are we  
18 going to need a new order? Has that already been done?

19 THE COURT: I'll sign any CORI record, any order  
20 you want, let me know. That shouldn't be a problem. You  
21 know the lineup of the first day?

22 MS. HARRIS: We know the first witness.

23 MS. SCAPICCHIO: Ricky Evans.

24 MR. REILLY: He's going to keep us busy.

25 THE COURT: I don't think it will be a problem.

1 MS. HARRIS: We also have a couple of pending  
2 motions, and would we be able to address those?

3 THE COURT: You can. Now we have to worry about  
4 Judge Wolf and my being late.

5 MS. HARRIS: Okay, that's fine, I just want to  
6 make sure we don't lose that.

7 THE CLERK: Judge, I will meet with counsel after  
8 lunch.

9 MS. SCAPICCHIO: That's fine. Nobody from the  
10 press gets it.

11 (Whereupon, the hearing was suspended at  
12 1:42 p.m.)

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## C E R T I F I C A T E

UNITED STATES DISTRICT COURT )  
DISTRICT OF MASSACHUSETTS )  
CITY OF BOSTON )

I, Valerie A. O'Hara, Registered Professional  
Reporter, do hereby certify that the foregoing transcript  
was recorded by me stenographically at the time and place  
aforesaid in No. 04-11193-NG, in re: Shawn Drumgold vs.  
Timothy Callahan and thereafter by me reduced to typewriting  
and is a true and accurate record of the proceedings.

/S/ VALERIE A. O'HARA

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VALERIE A. O'HARA

REGISTERED PROFESSIONAL REPORTER

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